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CERTAINE CONSIDERATIONS

UPON THE

GOVERNMENT OF ENGLAND.

BY

SIR ROGER TWYSDEN, Kt. and Bart.

EDITED

FROM THE UNPUBLISHED MANUSCRIPT

BY

JOHN MITCHELL KEMBLE, ESQ. M.A.

MEMBER OF THE ROYAL ACADEMIES OF BERLIN AND MUNICH,

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INTRODUCTION.

THE valuable treatise which is now for the first time committed to the press is the work of one of the most laborious and judicious antiquaries that the seventeenth century produced. Many of our countrymen, of various ranks and in various branches of learning, were indeed distinguished at that period for a wide and sound erudition, and for a generous devotion to historical inquiry, which have never been surpassed by any generation of scholars. It was the age which comprehended the great names of Coke and Bacon, and Camden, Selden, Somner, Spelman, Evelyn, Digby, D'Ewes, Ashmole, Dugdale, Junius, Usher, Gill, Cotton, Savile, Whelock, and, though last not least, Twysden. Yet, amidst all this company of earnest, learned, and accomplished men, sir Roger Twysden occupies no secondary place. Like Selden and sir Symonds D'Ewes, he was engaged in the business of active political life, during the most exciting and troublous period of our history: he was a country gentleman, deeply mixed up with the affairs of his county; a careful landlord, responsible for the conduct of a large estate, and the welfare of a numerous tenantry; a justice of peace, and in the commission of oyer and terminer; a commissioner in the matter of ejected ministers; a deputy lieutenant at a time when lieutenancy was really a military function, and imposed other duties than wearing an uniform at a levee; last of all, he was a husband, and the father of

a numerous family; and it was then not easier than it now is to provide for daughters and younger sons a position consistent with the honour and dignity of the family from which they sprung. *Primogenitura facit appanagium:* but courtiers then swallowed up employments which have in later times been a happy resource for the scions of influential county families; and the squire of the seventeenth century had to provide means for cadets, which a more skilful age has sought in other modes of provision than a careful and frugal economy.

And yet, amidst all the distractions of political and public life, and the cares imposed upon him by his station and domestic circumstances, undeterred by difficulty, undismayed by persecution, we find him devoting the energies of a powerful mind to the investigation of our national antiquities, rendering some of our earlier authorities accessible for the first time to his fellow countrymen, and finally producing two of the most remarkable contributions we yet possess to our ecclesiastical and political history.

The student in an age like this, when the means of collecting knowledge are widely diffused, and the aids to its co-ordination and application sufficiently supplied, can form but a faint notion of the difficulties which, in the seventeenth century, still beset the path of the historical inquirer. Much that is now accessible through a never resting press was then still locked up in manuscripts, too often guarded with jealous care from the eye of a stranger. No British Museum opened its hospitable doors to every respectable applicant; and even though Cotton and D'Ewes, and other equally noble men, gave great facilities to all who had any claims upon their notice, in many cases long negotiations and no little diplomacy were necessary in order to obtain sight of a rare book or valuable manuscript.

Continental works of the greatest note were not then easily obtained, and even when picked up by the travelling Englishman were only to be purchased at a high rate, and at imminent risk of miscarriage in the transport to this country. Above all, historical studies were but in their infancy: nor had the zeal and labour of successive generations of scholars yet established that critical apparatus, without which so many problems in chronology and philology would still remain unsolved.

And yet it is impossible to deny that no age has produced a more vigorous race of thinkers, or one to which we owe more gratitude for their labours.

It does not, however, seem difficult to account for this. It was an age of restless mental activity, in which every energy of mind was braced and trained by the daily exigences of public life: when great principles were still to be brought into light, great ends still to be struggled for, and when strong minds eagerly took part in the struggle, to which circumstances irresistibly hurried them on. The storm of the Reformation had not so long passed away, but what the whole frame of society still rocked and swayed with the convulsion. Men were yet living who had seen the fires of Smithfield, or trembled at the savage insolence of Bonner: more had shouted when the Jesuits were turned off at Tyburn, or had appeared in the array at Tilbury, or had joined in the rejoicing over the ruin of the Armada, and the salvation of the Protestant interest in Europe. The sudden awakening of the human intellect from its sleep of ages had been followed by a prodigious activity, and that had necessarily been directed upon the questions which were now of vital and incomparable interest. The upholders of the papacy had learnt that acts of parliament and royal proclamations were not sufficient to repress the

dangerous opinions of innovators who appealed to the word of God and the traditions of history. The fagot and the scaffold are poor arguments, that may silence, but cannot convince: and, like the dragon's teeth of old, each martyr's blood gave birth to a new army. In their despair the papists appealed also to the past, and the battle was soon shifted to the field of philology and history. From that moment the result was inevitable. Then all at once every earnest and thinking man found that the weapons with which he was to combat must be drawn from a new armoury. The innovators appealed to the bible, the works of the fathers, the ecclesiastical historians: their adversaries were compelled to deny the accuracy of the translations, the correctness of the deductions. Philology and logic, the two stern muses, were at once made the arbiters of the contest. Men of all classes, whose eternal salvation depended upon their really ascertaining the truth, laboured over Hebrew rolls and toiled through Greek manuscripts: tradesmen and shop-keepers, soldiers, country-gentlemen, peers, and privy-councillors adopted the studies which had been neglected by bishops and cardinals: one by one every gross error was purged away, and the full triumph of the Reformation secured. Neither the passions of Henry the Eighth, nor the profligate infidelity of Leo, nor the rude violence of Luther, did it, though all aided it: in truth, the time was come when the great intellectual birth of the age was become too big for swaddling clothes.

But even therefore the power thus raised was not to subside when the circumstances that had evoked it passed away. The commencement of the seventeenth century saw parties very differently situated from those of the sixteenth. The fury of vulgar persecution had indeed been allayed, and neither the pile nor the scaffold

were now the daily resources of exasperated polemics; but controversy had not been silenced abroad, even if it were compelled to mutter in secret here: and good service was yet to be done in refuting Spanish and French and Italian champions, who, comprehending at last the new nature of the contest, brought to it logical and philological weapons, scarcely less keen and polished than those of their opponents.

Moreover, although the cause of the Reformation had triumphed, the reformers themselves were very far from agreed as to the system which was to be set up in place of that which had been overthrown. The articles of the Church, after much botching and patching, had been left in a condition little consistent with the general tendency of the Liturgy. The germs of the Low and High Church parties, big with future convulsions, had already shown themselves. The successors of Cranmer and the predecessors of Laud were already measuring one another's powers for a deadly struggle; and puritanism, bred in the midst of civil discord, growled and scowled in the distance. That unanimity which had never been attained under the leaden despotism of a Church which strained every nerve to assure it, was little likely to result from the studies of a thousand men, of all varying powers,—the sternly logical, the imaginative, the enthusiastic, the savage and persecuted, the refined and instructed. The bible had indeed been proclaimed the sole rule of faith, but then there were differences of translation as to various passages, differences of opinion as to its doctrines, and nearly as many controversies as readers. For the great misfortune of mankind its chapters had been divided into verses, which might be quoted for any purpose, good or bad, without reference to the context. Many still hankered after what their adversaries called the

flesh-pots of Egypt, and, even less complimentarily, the abominations of the harlot that sitteth on seven hills. In fact, it is not very easy after an earthquake to reconstruct, upon the old model, the palaces and houses it has levelled with the ground.—So the tradesmen and shop-keepers, and soldiers and peers and country-gentlemen continued to read the Hebrew and the Greek, and the works of the fathers, and bandied amongst themselves the heavy blows they had once unanimously bestowed on the common enemy. The cup of polemical bitterness was full to overflowing.

At this ill-omened conjuncture, the throne of England was filled by a narrow-minded and contemptible prince, whose absurd notions of the royal office, taken up in chorus by a host of obsequious courtiers, were seen at once to be contrary to all the rights which Englishmen had inherited from their remotest ancestors, and which in many a fearful crisis had been purchased and repurchased with their blood. Ungainly in his person, effeminate in his manners, without the dignity of a king, or the principles of a gentleman, James the First had rudely shocked the expectations and disappointed the hopes of a people who had been disposed to receive him with hereditary loyalty. Given up to worthless favourites, who pillaged the subject at home, while they degraded the national honour abroad, now scolding, now railing, now boasting of his skill in king-craft, now shrinking from the manifestation of a single manly feeling, he had deeply shaken the respect with which Englishmen had been accustomed to regard the office of their sovereign, and the affection they had ever willingly paid to the person of their ruler. To such a despicable prince they were now called upon to yield up more than had ever been claimed by the most energetic and fortunate of the Plantagenets, or the most despotic and crafty of the Tudors.

The man whom they could not respect for his public virtues, or love for his personal good qualities, they were compelled to fear, as a systematic encroacher upon the national liberties; while the stern and angry reformers looked with the utmost jealousy upon a succession of ill-advised measures which rendered the king's secret leaning towards popery at least a matter of grave suspicion. Concessions to Rome, which the great mass of the nation undoubtedly abhorred, begun to be whispered about, as the conditions of an alliance with the Spaniard, odious to every patriotic Englishman. To conciliate those who had loaded the ships of their Armada with fetters and thumbscrews, whose armies were officered with Jesuits, and whose victory would plant the "Inquisition" on our shores, the noble blood of Raleigh had flowed by an iniquitous sentence. In his hatred of the puritans, whom he comprehended with instinctive cowardice, and detested with all the detestation of a weak and narrow mind, James had manifested a leaning to the papists, or the Arminians, who were little less obnoxious than papists themselves to the zealous Calvinists of the English Church. In their turn Arminians of the Church of England had adopted and openly avowed opinions delightful to the despotic pedant on the throne, but which even the most loyal Englishmen at once denounced as fatal to the national liberties, and contrary to every tradition of the national history.

Thus was the venom of political added to that of religious contention, and the agitation of the Reformation still kept alive: nor was the direction of men's studies changed; for the same history which had been appealed to in the affairs of the Church, furnished authority as to affairs of the state. It was not easy to read the ancient chronicles which refuted the pretensions of popes, without meeting

with many details very hostile to the doctrines popular at court. If the Anglo-Saxon remains told of archbishops who denied transubstantiation, of gospels read to the people in the vulgar tongue, and of married priests, of justification by faith, and the power of the keys given to all duly ordained persons; if they entirely ignored the existence of ecclesiastical courts, and proved the subjection of the clergy to the tribunals of the State, they also told very intelligibly of limited monarchs, popular rights, and witenagemots controlling every act of the crown.* In them was not to be found a trace of the preposterous theories of divine right, arbitrary and patriarchal power, passive obedience, or non-resistance, that were growing up under James's fostering care, that were to embitter the struggle in which monarchy and aristocracy should be struck down together, and that were finally to be silenced only when a cruel, cold-blooded, and incapable bigot, attacked, upon their own principles, the warmest of their supporters.

Mr. Macaulay, in one of the most brilliant passages of his brilliant history,† has given a picture of the country gentleman in the latter half of the seventeenth century, which I believe to be hardly just to that distinguished and powerful class. He represents them generally as men without refinement or education, little above their grooms and gamekeepers in manners or acquirements, hardly capable of

* The revival of Anglo-Saxon study was contemporaneous with the Reformation; Parker, L'Isle, and Fox, wielded it as a weapon against popery. But it was continued also, for the sake of history, in the later times, when, though every educated man was a theologian, theological struggles were no longer the exclusive objects of attention. Spelman, Selden, Somner, D'Ewes, and Twysden, all cite Anglo-Saxon usages and phrases, publish Anglo-Saxon laws or councils, and quote Anglo-Saxon homilies. Among the Surrenden MSS. is a very creditable Anglo-Saxon vocabulary in the hand of the celebrated Sir E. Dering, and obviously formed by himself in the course of his own reading.

† Hist. of England, i. 320.

more than signing their names to a mittimus, and separated from their rude neighbours and dependents only by their wealth, station, and the exercise of a barbarous hospitality. It may easily be allowed that twenty-five years of civil disturbance, during which the country-gentlemen had been the greatest sufferers both in person and property, may have greatly diminished the amount of learning or polite letters to be found among the members of their body. And we may therefore admit the squires of 1666 to have been somewhat less distinguished as a body than those of 1640; or, what is much the same thing in this respect, those of 1620. But it is hardly possible to believe the difference to have been so great, the degradation so sudden, or the distance so vast between the one generation and the other. Even under James the Second the country-gentlemen appear to me, as a class, to have merited a better note than they have received in Mr. Macaulay's attractive volumes. Very little earlier this was the class that produced Wentworth, Carew, Osborne, D'Ewes, Cotton, Dugdale, and Twysden; and that had produced Wyat and Raleigh. No doubt there were, even among them, many vulgar, and some brutal men; but when we look at the figure made by many of this class in the House of Commons, the works they sent to press, the public papers they prepared in their grand juries and magistrates' meetings, and the petitions they drew up to kings and parliaments, we must necessarily claim for them a far higher amount of civilisation than their learned and able critic has allowed to the generation that immediately succeeded them. He speaks with disrespect of their books and book-learning; yet many of them, in spite of difficulty and expense, collected large and excellent libraries, still in the possession of their descendants. So late as 1653 thirteen copies of the "great Hebrew Bible"—that is, Walton's Polyglott—were

subscribed for by twelve Kentish squires, Sir Roger Twysden's friends and relatives,* at a cost of not less than ten pounds a copy, —a large sum for those days, and perhaps more than equivalent to five-and-thirty now. And, without disrespect to the honourable successors of those men, I may be allowed to doubt whether a similar work would now meet with a similar reception in any English county.† Sir H. Spelman's energetic zeal for learning is recorded not less in the elaborate works which he published himself, than in the patronage he extended to Wheloc, and the attempted establishment at Cambridge of a Professorship of Ecclesiastical History and Anglo-Saxon.‡

The anxiety which sir Roger Twysden felt about his own collection of books is shown in the following note:

"I would not have them come after me sell any of my bookes, ney though they find I haue two of one and y^e^ same sort, assure hymself there was somewhat why I kept them. Ney, if it so fortune I haue y^e^ same edition twise, as certayn workes of Padre Paolos and others printed at Venice 1606 and 1607, during the tyme y^t^ republique was interdicted by Paolo V^to^. yet put them not away, for they are such bookes as are not to be got, at least of y^t^ edition, nor neuer will bee prynted again w^th^ equall authoryty by y^e^ approbation of y^t^ state; see the Trattato del' Interdetto, prynted at Venice an^o^. 1606, not only by y^e^ alowance of y^e^ repub. but w^th^ y^e^ armes of that state, and I haue two of them of y^t^ impression w^ch^ I keepe, fearing I may loose

* Twysden's MS. Journal.

† There is also an entry of sums paid by him on account of Castell's Dictionary in 1658, towards which he obtained six subscribers, at three pounds a copy, in the same county.

‡ This failed only through the breaking out of the Civil War; but the papers referring to it, including letters which show how warmly Usher entered into the scheme, are still preserved in the care of the registrar at Cambridge.

one of them, or it might haue some mischance; and one or more of another.

"Now for books y^{t} it may bee my sonne cannot vnderstand, yet put them not away, for some may come after vs y^{t} will hyghly esteeme them: my father was a great Hebrician and left many bookes of y^{t} tongue, w^{ch} though I haue little knowledge of, yet I neuer parted wth any of them, though I could haue sold them well. So perhaps I haue bookes of Italian, French, Spanish, and some manuscripts w^{ch} my sonne will not reguarde, perhaps can not read, yet let them not bee sold, for perhaps hys sonne may esteeme them as much as I doe.

"In short, I would haue my library bee an earthloome, or heyrloome as wee call it, to the famyly of Twysdens for euer."

Among his MSS. was the excellent copy of Ovid's Metamorphoses which Farnaby used for his edition: it is now in the British Museum.

Nor will Mr. Macaulay's description justly apply to the wives and daughters of these gentlemen: undoubtedly they were busy and careful house-wives, spun, made puddings and eye-water, and decoctions for the yellow jaundice, and looked closely to the affairs of their families; and some of these functions we perhaps now see performed more satisfactorily through the wise application of a great principle, —the division of labour. Worse educated than the men they no doubt were, wrote ill, spelt worse, and probably read neither Racan nor Ariosto; but then again they certainly had the advantage of not reading Dudevant and Balzac, and of escaping the sentimental poison of Hahn Hahn. Moscheles and Bordogni would have smiled disdainfully at their performance on the spinet and their execution of madrigals, nor would they probably have appreciated the *fioriture* of Mademoiselle Lind, or the tender expression of Signor Mario; but they were genuine, hearty women, strict mothers, careful, sub-

missive, and affectionate wives, active managers, and honest matrons: their familiar letters, of which we have a few, are distinguished, as women's letters so often are, by the most agreeable as well as endearing qualities; and their religious exercises give us occasionally the very highest opinion of their talents as well as piety. Some of the Lady Anne Twysden's—Sir Roger's mother—can hardly be excelled.*

* As these are most characteristic and beautiful, I have not scrupled to print one of them here, though in a note, that it may not interfere with the text. It is taken from a little manuscript handbook of passages selected from the Gospels, and prayers, once the property of Isabella, Sir R. T.'s wife, as appears from the following note on the title-page, in that lady's hand: "This was my Lady Anne Twysden booke, the plases of scriptvre all of hir owne election and plasing, which she had all by hart. Hir whole delight was on the Lord Jesus, and the waye to him, with whom she now is, and injoyes what all hir life she so mvch desired and longed for. The three first prayers hirselfe made; that which is to be sed in sicknes was, in hirs, often on hir command red to hir, and some verses which she had set together for that same pvrpus, which she likewise many times repeated. Extrem desirus she was to leve this vaine world, for so she held and calde it, and to be with hir Savior, intreating all to beleve and love him, and onanother for his sake. A more nobell, virtivs, religivs lady this earth bears not. The 14. of October, 1638, she left vs and this life to be a most blessed saint in heaven. As dearly as hir owne she loved me, and my love was more to hir than I can expres. This book she gave me; for whose deare sake I will never part from it, that am hir most humble davghter,

ISABELLA TWYSDEN."

"Lady Anne's Prayer for the Sick.

"O thou Eternall Word, by whome in the beginning all things were made, that wert God and with God, at and before all beginninge and eternally soe, hast yet been pleased to take on thee the forme of a servant to saue vs otherwise lost creatures, borne slaues to Sathan by the sinnes of our first parents, and the continuall increase of our own, still calling on the iudgement of euerlasting death, which thy infinite loue and mercy hath changed into eternall life, by becoming man for vs, suffering all due to vs, and being God and Man, performing all perfect righteousness, art thyself become ours, and taken away the sting of death from all beleeuers in the; O Lord, thou that camest into the world to saue sinners, hast taught vs to know thee in life eternall, promised that whosoeuer beleeueth in thee shall not perish but haue euerlasting life; by thy Holy Spirit, wee beseech thee to strengthen this faith in us all, and espetially in this thy sicke servant, and also to her former health, if it be thy will, restore her; in the meane time giue her patience to indure what thou shalt be pleased to lay on her, with assured confidence in thee, that, though heaviness doe indure for a night, sendeth ioy in the morning; but if thou, our God and Savior, beest

At this time London was not the sole centre of civilization. Country-gentlemen did not perhaps often visit it, although many of their number had houses in it and in the neighbouring villages: nor are they to be confounded in opinions and in manners with the courtiers who thronged the antechambers of Whitehall, or administered welcome doses of adulation to the royal patients at Windsor and Theobalds. Though mutual society was difficult at a time when the roads were so bad as to form a satisfactory excuse for not attending a manorial court,* yet each county had its own means

determined to make this sickness her passage to thee, settle in her all comfortable assurances in thee, that her heart may with true ioy welcome it; fixe in her memory all thy mercies and generall promises to all beleeuers; draw her weary and heavy laden to thee to have ease, that forgiuest all our iniquities and healest all our infirmities; now double upon her what worke of thy Spirit she hath at any time felt in her, assure her soule that pardon of all her sinnes is signed and sealed in thy blood, take all earthly thoughts from her, and fill her only with the loue of thee; give to her understanding here if it bee thy blessed will some taste of the happiness she shal for euer inioy with thee, that with the more longing gladnesse to be in thy presence she may desire to be deliuered from this present evil world, out of which in thy appointed good hower wee most humbly beseech thee to giue her in thee so blessed and peaceful a parting, that the consideration of her great gaine may lessen the grief of her losse to her sad friends; and teach vs all to praise and glorifie thee for euer, and be ready prepared to come when thou callest, that art the life and light of all men; to whom wee, giuing our most humble thanks for all thy unspeakable goodnesse, doe farther beseech as thou hast taught vs,

"Our Father, &c."

Of this truly noble woman, one of her children has left this characteristic description: "She was of stature tall, of complexion very fayre, mixed with a settled rednes in her cheeks. By a fall at nurse received a lamenesse vpon her right hippe, which with her yeares increased. In her youth bred at the court of queene Eliz. vnder her noble parent, the lady Heneage, long enough to know the vanities of that life and to decline them. Afterwards maryed to S^r^ Wm. Twysden; she was mother to fiue sonnes and two daughters, all aliue and men growne at her death. She was skilful in ffower languages, Latine, Italian, Spanish, and French, yet discreete to keepe the world from knowing to much of it. In her discourse she was graue and wise, in her pen short and judicious, in her answeres quick and pithy, in her meditations sad and heavy, in her life pious, and death glorious."

* "Beeing in the dead of winter when the ways are hardly passable from hynce." MS. Journal.

of communication, and its own internal organization. Its gentry were often little more than one wide family connexion, resting on common descent and constantly repeated intermarriage. The Assizes, the musters of the Militia, the duties of the Bench, continually brought them together, and furnished occasions on which the example and influence of the more elevated and enlightened acted upon the ruder and coarser members of the body. The manorial relations of lord and tenant threw the various members of the county aristocracy into continual contact; innumerable commissions for the public—or rather royal—service incessantly assembled them. The bonds of blood and neighbourhood were incomparably stronger than they now are, and even the feuds of great families were a means of concentrating the interests, increasing the intercourse, and fortifying the interdependence of various branches of the same stock. At the commencement of the seventeenth century, an insult offered to one leading country-gentleman by another, might still have put forty hot partizans in the saddle on either side. But, before the close of its first quarter, the squires had hung up the large-hilted swords and bumped headpieces that had saved the brains of their fathers in many a civil brawl, and taken to much more efficient weapons, the law-book and the pen; though they no longer turned out on the southern downs to fight, they crowded to Maidstone to swear, with one another. At the first glance we are apt to be surprised at the great knowledge of law manifested by men of this class about the time of the Civil War; but it is in reality not so surprising as the utter ignorance of it so often manifested by their descendants of our own day. The vexatious interference of the crown with the tenants in capite, of the Court of Wards,* of the com-

* Mal-administration by corrupt officers added to the mischief of a vexatious system.

missioners for the supply of the household, of the purveyors,—the disputes about illegal patents of monopoly, tenths and fifteenths, benevolences, loans, and ship-money,—the questions of tithes and moduses, heriots and quitrents, had made men abundantly familiar with the details of a system which we can happily afford to neglect: the squire was the assessor of the Judge of Common Pleas or King's Bench, who came down at the assizes, and his name stood in the commissions of oyer and terminer; nor in many respects was the law then so intricate as to require the exclusive management of counsel "learned" in the same. An earlier, and probably also a later, race might have made a far less enlightened stand against ship-money. I am indeed disposed to believe that in 1720 the country-gentlemen answered far better as a body to Mr. Macaulay's description than a century earlier, though we should undoubtedly wrong them were we to believe that even then their body did not produce men who would have been the ornament of any age. Even at that most degraded period we can as little suppose them to have been all Squire Westerns, as we can admit all the clergymen to have been Parson Trullibers, or all the waiting women Pamelas. But undoubtedly in the earlier half of the seventeenth century a great amount of both solid and polite learning distinguished them; and to this must be attributed the energetic resistance which the king and his corrupt courtiers met with in their insane crusade against the liberties of England. It is not just to measure the whole cavalier body by the opinions and actions of the men who hurried the king into acts which were deeply

Sir Roger in his directions to his son, intended to be a guide after his own death, in suing out his successor's livery, does not scruple to say that bribery is the best resource, and in the end the cheapest husbandry: "The best way and the only way to passe as lightly and as well in all things wherein the king hath his share, is to bribe his offycers."

deplored by even those whose notions of loyalty yet compelled them to take part with him, when the great struggle had at length become inevitable. Throughout the counties were to be found loyal gentlemen, representing some of the noblest blood of England, as energetically determined against ship-money as Fiennes or Hampden or D'Ewes; as determined upon wreaking the vengeance of offended law on Strafford, as ever were Pym or Vane or Falkland. Only when the scabbard had been cast away, did they, with much reluctance and many misgivings, join a cause they could not entirely approve, yet which hereditary traditions and in some cases even the urgencies of personal security compelled them to countenance. Let it not be forgotten that in moments such as no historical precedent can guide, no legal prescription define, when the very foundations of society itself are broken up, and the warring elements of state are at once released from the bonds of law, every act of men becomes anomalous if judged according to the maxims or the practice of legal periods. The Long Parliament soon found it necessary, in the very instinct of self-defence, to burthen the subject with impositions as heavy, and, according to the views of many, as illegal,* as those which they had condemned in Charles. The government by committees was in itself resented as illegal, and it is hardly to be doubted that if these persons sometimes on public grounds stretched a point against a neighbour whose influence might be dangerous, and whose good will to their cause was doubtful, on many other occasions they gladly seized opportunities of satisfying avarice or ambition, by threatening the estates and

* No one ever doubted the right of the House of Commons to tax the subject; but very grave doubts were entertained of their right to levy taxes by their own officers, or to distribute at their own pleasure the funds so raised. Most admitted that they alone could give aids and subsidies, but most also held that the crown was the sole judge how these sums were to be employed.

liberty of those whose wealth or family connexions had become obnoxious, or on whom an old feud might now be safely wreaked.* Again many good Cavaliers were obtuse enough not to comprehend proclamations which declared the Parliament to be levying war *for* the King, while they saw that very King in arms, and read his proclamations which threatened the penalties of high treason against all who did not flock to his standard against that very Parliament. If in a moment of such difficulty they wavered, and declined to join the Parliament's forces or subscribe to the Parliament's necessities, they found themselves loaded with fines, their estates sequestered, their persons arrested, and, even if not consigned to loathsome prisons, yet confined to their houses in London, or a limit of a mile or two from their county-town. If they fled to Oxford and joined the King, they found themselves exposed to the ridicule of the courtiers, disgusted with the neglect which attended their advice, terrified with the systematic falsehood that characterized every word of their faithless master, and oppressed with the miserable conviction that the triumph

* Sir R. T. more than once insinuates his belief that the severe treatment he met with at the hands of the Kentish Committee was due to the personal and family animosity of Sir A. Weldon. (MS. Journal, *passim*.) One instance may suffice; and the more readily given, that it is characteristic of Sir Roger's style and manner, and a specimen of the valuable materials contained in his Journal. "There was Sir John Sedley, Sir Anthony Weldon, with whom our family had heretofore some disputes, etc. . . . . Of this gentleman I shall say the lesse, beecause there had beene former differences beetwixt our two famylys (I pray God he did not now take an oportunyty of revenging that by power he fayled of doing by justice); yet I cannot deny hym to haue beene a person had noble principles, yet shadowed with many vanities, if not vices; a good friend where he tooke, no lesse an enemy; in which notion he had long looked on our name; one, I dare say, did not in hys hart approve the actions of the two Howses, yet the desire of rule brought hym to run with the forwardest." (MS. Journal 1643.) A standing cause of quarrel was the right to certain pews in East Peckham church, which the Twysdens ultimately won, at considerable expense to each party.

of the cause in which they fought would be the downfall of the liberties of their country.*

* "Never did any man with more earnest expectation long for a Parlyament then I did; seeing, to my understanding, the great necessity of one both for church and state; nor did any (so far as my calling led me) more then I oppose any illegal course might retard the calling of one;—as my sute with the heralds for fees after my father's death, in my Lord Marischall's court, might give good evidence; as likewise the contest I had with one John Bristock, who, setting up a brew-house at Tunbridge, by a power as he pretended from court, prohibited men the brewing and selling beere of their own making, and thereupon uttered his owne, not only at unreasonable rates, but (as was informed) issued out unwholesome drink; which being complayned of, he was so proceeded against by that worthy patriot Mr. Dixon and myself, when others refused to meddle with it, as he made little farther use of his patent;—or did more joy at that honorable action of some Lords, who delivered a petition to his late Majesty (Charles I.) in the North, for the summoning of one; never imagining a Parlyament would haue tooke upon them the redressing things amisse, eyther in the ecclesiastique or temporall government, by a way not traced out unto them by their auncestors; or the House of Commons would haue assumed a power of commanding those who authorized their sitting in it, otherwise then by making lawes that both were to obey." (MS. Journal 164$\frac{2}{1}$). "Beside, I did not love to haue a King armed with booke lawe [that is, precedent by statute against the common law of the realm.—I. M. K.] agaynst me for my life and estate. Should his Majesty come in a conqueror,—which I wisht not—he could," etc. (MS. Journal 1642.) "Soe that I am at a stoppe, what the grounds of those counsels should bee; neither can I imagine but that they were, eyther from such as desired to see his Majesty come in an absolute conqueror (which I was never Cavalier enough to wish), or those who held it theyr gayn to continue our miseries." (MS. Journal 1643). The grounds upon which Sir R. T. deprecated the King's "coming in as a conqueror" are plainly expressed in the Journal of 1643. Speaking of one of the King's proclamations in the beginning of that year, he says, "I profess I was at first sight amazed to see a King, not able to giue protection to hys people, yet declare it high treason to pay any assessment or contribution unto them, as that which was ayding or assisting of them, prohybyted by the Act of the 25 Ed. III. And when the Parlyament (for so men now called the two Howses) had publisht a sequestration of the estates of those who had voluntaryly contributed to his Majesty, not lying under the power of any part of his army;—the King in this adds no qualification whatever. And yet I have beene taught since,[a] the giving ayd in such a case not to have beene treason. By this all men saw, if hys Majesty prevayled they must looke for nothing but the extremity

[a] Co. Inst. iii. p. 10, § "It was." See 6 Ric. II. cap. 3, stat. 2.

Any one who reads the treatise that hereafter follows will readily understand why Sir R. T. would not join the king: and yet he will find little difficulty in understanding why Sir R. T. was severely persecuted by the Parliament. He suffered the natural fate of all who in times of trouble reject the exaggerations of both contending parties. More earnest than Falkland for popular liberty, less misled than Falkland by feelings of personal loyalty, he pleased neither party, as he liked neither party entirely: and the clearsightedness of the House of Commons early led them to put him under such restraint as might secure his neutrality, since his co-operation on the popular side was hopeless. On one subject indeed he was inassailable: he loved the Church of England as established by Queen Elizabeth of blessed memory, with the whole force of his ardent nature. He abhorred the stern Puritan who would abolish episcopacy and cathedrals, and looked upon the secularization of Church property as unpardonable sacrilege; and this, not, as many now might do, from a wise dread of unsettling the foundations of property, but because he looked upon Church property as something sacred in itself, because he dreaded lest a participation in the spoil might bring a curse upon what he possessed and hoped to leave to his children.*

of law, which in so generall revolts princes haue seldome put in execution, and never fortunate in professing beeforehand; as indeede what effect did it produce? but by making the adverse party more firmely combyne against hym from whom they expected no favor, in the end was a cause of his utter ruine." Lilly, who was very likely to have good information on such a subject, says: "I haue heard it from the mouths of many worthy gentlemen whose hap it was to serue him in the late wars, that they did believe, had he, viz. the King, by arms conquered the Parlyament, he would haue proued the greatest tyrant the English nation euer had to rule ouer them; and therefore they did still pray for a reconcilement betwixt the Parliament and him, but could neuer endure to hear he should conquer our armies."—Life of K. Charles I. p. 182.

* Sir Roger leased lands from Canterbury, which he held at a high rent, over which he often grumbled, and to diminish which he often squabbled with the Chapter in vain. When these were secularized he became their purchaser, because he had without them no

Though averse to popery in the highest degree, he succeeded in being believed a favourer of it; and the man who devoted the ener-

road to his parish church at Chart. But he had no mind to profit by his purchase. I add an entry from his journal, as highly characteristic of the author of the "Historical Vindication of the Church of England." The note is as follows (Christ Church Leas, 1649 and 1650):—

"The lands having in leas I was forced to buy because I had otherways no way to goe to y^e^ church at Chart, so I was forced in my brother Francis, Philip Bartholomeu, and John Smallman's names to buy and pay for them at Gurny howse, but I payd after y^e^ rate of 15 years' purchas for the same, onely for 200^li^ and some odde pounds of Collonell Tomlins I payd but 70^li^ for an hundred, they beeing upon debentures of pay due to hym on service: the whole purchas was 230—15—04, and 13—00—00 the charge of passing it to them; so Frank and I payd Col. Tomlinson, he, first, about y^e^ beginning of March $164\frac{9}{50}$ 61^li^, and I myself to his servant Wat, y^e^ 20^th^ of March $164\frac{9}{50}$, 79^li^ at my brother Thomas hys howse in Barbycan, for w^ch^ I was alowed 200^li^ at Gurny howse.

I payd more to one John Pickersgill y^e^ 13th March $164\frac{9}{50}$	07	10	00
On y^e^ contractors certificate 6^d^ y^e^ pound alowed them	05	15	04
Interest to be alowed for bills, what this is I understand not . . .	14	10	00
More in ready mony	03	00	00
The two bills bought of Col. Tomlinson 20 March $164\frac{9}{50}$ . . .	200	00	00
	230	15	04
More payd to Mr. Pickersgill, the sollicitor who passed it, for hys fee and charges by hym layd out in passing it the 28 October, $164\frac{9}{50}$ March 20	013	00	00
	243	15	04

"And God blesse this land to my heyrs and graunt it doe not infect the rest, w^ch^ I was necessitated to purchas and did never any more unwillingly; and if ever y^e^ church of Canterbury come to bee restored, w^ch^ God graunt, I hope and desire my heyr w^th^ all willingness returne what was w^th^ violence by y^e^ horrid injustice of y^t^ parlyament torne from them, least it bee indeede a canker to all y^e^ rest; and in y^e^ mean tyme I desire he will w^th^ y^e^ revenue of it, at least soe much as was anually payd y^e^ church, and somewhat more, as ten pounds a year or thereabouts, remember some poore orthodoxall ministers or schollers.

"Roger Twysden."

[In a much later hand] "W^ch^ is since returned to the trewe owners, of w^ch^ no man is more glad then I myself."

[In another page, after reciting the leases, he says,] "The inheritance of this land I haue beene since forced to buy of y^e^ parlyament, having no other way to ride to Chart

gies and powers of the best years of his life to denouncing its usurpations suffered persecutions of no ordinary severity because he was secretly thought inclined to its errors. Sir Roger was indeed too good a constitutional lawyer to approve of the High Commission Court, or the Star Chamber, and too high a gentleman to countenance the vulgar brawling of such weak and wicked bigots as Laud; but he was not a whit more inclined to the root and branch work of his kinsman, Sir Harry Vane, or the ignorant violence of less instructed members of the Presbyterian and Independent parties. His fate was the common one of wise men: had Laud triumphed, he would have been punished for resisting the omnipotence of the clergy; under the reign of the Puritans he was persecuted as an Arminian, a secret papist, or something worse. There is no question that the correspondence he carried on with members of the Roman Catholic communion abroad justified in their own eyes the severity with which the Presbyterians treated him; but the correspondents of Sir R. T. were the friends and pupils of Sarpi,* and his letters show that a main object of his anxiety was to obtain a copy of the History of the Council of Trent, and details of the life and conversation of its illustrious author. I have no doubt that, in common with all other good and christian men of all times, he desired a reconciliation between the Romish and the Anglican Church: there yet exist letters and plans or draughts of plans which show it. But the terms upon

church but through it, which otherwise I had neuer done (see p. 321), and is now returned to y^e^ trewe owners."

* Among his letters is an interesting communication from Fulgentio, and a paper which I strongly suspect was prepared by Panzani himself (or some one in his confidence), for the instruction of the French court, in 1638. These documents contain information of singular interest respecting the opinion entertained by Cardinal Barberini and other leading papal ministers respecting Archbishop Laud, and other prelates of the Anglican Church.

which this reconciliation is to be effected are all that any of us dispute about; and here Sir R. T. was as firm as the stanchest Puritan could desire. In truth, his whole mind was in *history:* he was quite ready to admit as much of popery (or nearly as much) as could be proved to have been admitted by the universal consent of Europe before the time of Hildebrand; and, if the papists could only be induced to give up their modern errors, he would have had no scruple as to their being recognised as elder brothers in the christian communion. But these modern errors made up popery itself, and to popery he was as entirely opposed as the most clamorous Presbyterian. To many of the least justifiable claims (as they were and are called) of the clergy here, he was equally adverse. He did not by any means look upon tithes as *jure divino,* and held other opinions on such points which less honest churchmen would very probably have stigmatized as damnable. But he had no notion of consenting that the episcopal system should be violently abrogated, only to have a new spiritual tyranny established under another name; he would not have consented to pull down the cathedral in order to set up the conventicle, any more than he chose to submit to the illegalities of a parliament, because he objected to the illegalities of a king.

The family of Twysden was an ancient and noble one in Kent. Originally from Twysden near Goudhurst, they had gradually extended themselves eastward, and their principal seat was at Chelmington near Wye. William Twysden, Esq. of that place married Elizabeth Roydon, one of the six coheiresses of her nephew Thomas Roydon, of Roydon Hall in East Peckham, from whom her estates there descended to her eldest son Roger, our author's grandfather; he was born in 1542, and at the age of 20 (Sep. 21st 1562) married Anne, eldest daughter of Sir Thomas Wyat the younger, of

Allington Castle, who paid with his head for the unsuccessful insurrection against Mary Tudor. In 1600, Roger Twysden, Esq. was sheriff of Kent; and three years later died, leaving several children, of whom the eldest, William, was Sir Roger Twysden's father. William Twysden, Esq. was born in 1566, and in 1591 was married by Alexander Nowel, Dean of St. Paul's, to Anne, eldest daughter of Sir Moyle Finch, by his wife, afterwards Viscountess Maidstone and Countess of Winchelsea. In 1597 he bore part in the "Island Voyage;" and in 1603 was one of those selected to accompany James the First to London, on which occasion he was knighted by the King, when the latter was splendidly entertained by Sir Thomas Howard at the Charter House.* He was a Gentleman Usher of the Privy Chamber, and in 1619 one of the canopy bearers at the funeral of Anne of Denmark.† On the erection of the Order of Baronets he was included in the number, June 29th, 1611. Sir William Twysden died on the 8th of January, $162\frac{8}{9}$, in the sixty-third year of his age, leaving his widow the Lady Anne, of whom mention has been made, his son and successor Sir Roger, and six other children. Sir William Twysden was a gentleman of no mean acquirements; in spite of his duties in two courts (for he had been employed in that of Elizabeth) he had found time for serious study, and, like most of the gentlemen of his day, had been a soldier as well as a scholar and a courtier. But I shall here take leave to insert Sir Roger Twysden's own account of his father, as I find it in one of his journals, premising only that almost every page of Sir Roger's rent-book proves how good a landlord and

* May 11, 1603.

† May 13th, 1619. See Nichols's Progresses of James I. vol. iii. p 609.

manager Sir William had been, not, as it may be supposed, without excellent aid from the Lady Anne, who appears to have been a perfect model of intelligent housewifry.

"8 January, $162\frac{8}{9}$, my father dyed." ROGER TWYSDEN.

"Beegining y^e^ yeere w^th^ y^e^ first of January, my father S^r^ William Twysden dyed 8^th^ of that month, 1629, at his house in Redcross Street in London; leauing this world about two of the clock in y^e^ afternoon, vpon Thursday, w^ch^ day first gaue him y^e^ light of it, and then y^e^ light of a far better; he was born y^e^ 4^th^ of Aprill, 1566, and dyed allmost aged 63, as will appeare by y^e^ computation of y^e^ rehersed times. His death was so pleasing and welcome to him, that it might much (if anything could) haue lessend our griefs, whom he left beehind him; when he spake not, wee could perceiue he prayed allmost continually, by y^e^ lifting vp of his hands: upon Tuesday he made an excellent confession of his fayth, and hauing ended y^t^ took a solemne farewell of all his children, and after that of y^e^ seruants, both men and mayds, and hauing disposed all things slept peaceably in y^e^ Lord. He was a man of great integryty and vprightnes of life: in his youth he had seene y^e^ warrs, and was in y^t^ expedition y^e^ Queene sent forth, vnder my Lord of Essex, to the Tercera Ilands, An° 1597, (commonly called y^e^ Iland Voyage,) when he left my mother, not knowing it, with child of me her first, borne during his absence, y^e^ 21 of August, 1597, whom (as himself two days before his death told me) she begd of God; and my grandfather in y^e^ mean time doubtful of his return, sayd, God had taken from him a man, meaning him, and sent him a childe, w^ch^ was myselfe. Beeing younge, he was somewhat violent in his vndertakings,

whether it were hauking, hunting, or what elce soever; but growne to ryper yeers, he soly applyde himself to learning, and to y^e^ best of y^t^ kind, to witte to dyuynyty, on w^ch^ his mind was so wholy set y^t^ he took more ioy in reading the Byble then I should in some well written history; indeed his learning lay much in vnderstanding y^e^ Hebrewe Text, in w^ch^ he had fewe his equall of any condition what so euer; in palmistry, physiognomy, and other such like ornaments, he had good skill, but especyally in astrology; it is strange what I haue knoune him tell by all these, and he woulde euer mayntayn he had them out of y^e^ Sacred Writt; amongst all these virtues he had no fault (but such as are common to all), if a little impatience were not, w^th^ w^ch^, beeing of an excellent nature, he hurt none but himselfe. He left 7 children beehind him, 5 sonns and 2 daughters, by his wife y^e^ Lady Anne Twysden, daughter of S^r^ Moyle Finch, and the Countess of Winchilsea (whose honor deryued it self to her children by y^e^ favor of King James and King Charles). His corps were caryed doune and enterred according to his desire, w^th^out any pompe or shew, the Sunday following his death, w^ch^ was y^e^ 11 of Janu. by me, whom he constituted his executor.

"Roger Twysden."

For his mother, Sir Roger Twysden (like all the rest of her children) seems ever to have entertained an affectionate respect, which her excellent qualities clearly merited. The accuracy with which she kept the books of her house, the pains she took for the advancement of its interests, the vigorous determination with which she resisted all encroachments upon her rights—including the obnoxious levy of ship-money—prove that she was a woman of strong character, and high principles; while the love with which she inspired all who knew her gives evidence of her amiability, and

numerous entries in the family papers shew that she was animated by a fervent spirit of piety. In a later journal I find the following tribute to her memory from her high-minded and grateful son.

"The right honorable y^e^ Lady Anne Twysden, my deere and noble mother, only wife of Sir William Twysden of East Peckham, my father, finding herself not very well on Sunday y^e^ 23 day of September, 1638, would goe to the parish church she lived in that day, where she complayned to me of some indisposition of helth, wishing the sermon done, but would not goe out of church home beefore the ending of it; in the afternoone I came to see her, and fownd her worse then I wisht, my wife crying by her. I did not then esteem her sicknesse mortall, it beeing a loosenesse and casting, w^ch^ did usually cure all ills with her, and she affirming to my wife (who, though a daughter in law, she loved as well as any child of her owne,) she was far enough from dying, made me then little sollicitous. On Munday the 28^th^ of Sep^t^ she rose, kept her chamber, but writ letters, to my thinking mending; a feaver, which she had at first, left her, the vomiting and scowring continuing. After that, she rose on Tuesday, Wensday, and Thursday, w^ch^ was the last good day she had on earth, lying on her bed; but growing wors and wors, on Sunday we sent for a physition to Maidstone, one D^r^ Ramsey, though she had in her house a Dutch gentleman, one M^r^ Johannes, on whose learning and knowledge she fully relyed, and her self was therefore against it, but, beeing persuaded to it, I wryt unto him, and about 4 of y^e^ clock he came; after wee had sent for him she spake to my wife and myself somewhat of her estate and y^e^ disposition of it, after which, she seemed not much to mind any worldly matter, but prayd contynually: the doctor at hys coming misliked her, but, staying all night, at his going told me had good hope of her, she

having slept prety well y^t^ night, and farther, y^t^ he concurred holy with M^r^ Johannes; that incouraged me to goe on Tuesday following, 2 of October, to y^e^ Quarter Sessions, where I had much buysinesse; in my absence she asked my wife once or twise thus, 'Bell, will not Roger come home to night?' who aunswered, 'Yes.' 'Tys well,' replyed my mother. That day, about two of y^e^ clock after dinner was y^e^ last tyme she rose out of her bed, and beeing layd again (for it was only to have it made) fetcht a sleepe an howre and an half long: when I returned, I went up to her, and, finding her wors then I expected, could not hould, but burst out into teares, w^ch^ she perceiving, sayd 'If you think me in daunger, I would receive y^e^ communion;' so I sent presently down to y^e^ minister, who y^e^ next day came and administered it unto her, with divers more y^t^ received it w^th^ her. As hee repeated the Confession, w^ch^ beegins 'Almighty and most mercifull Father,' she sayd it after hym, once desiring hym to goe on more slowly, y^t^ she might doe it; never any person desired any thing more earnestly then shee to bee dissolved, to bee w^th^ Christ, and y^t^ not only in her sicknesse, but many yeeres beefore, in perfect helth, she would affirme her worke was done, y^t^ she had nothing to doe but dye. One night, she, seeing my brother Will, Jack, and my self standing by her bed side, used these words: 'I beseech you, love y^e^ Lord Jesus, and love one another; you know y^e^ tale of y^e^ fagot, w^ch^ being bound together is not to be broken, but every twigge easyly by it self.' Thus she lay full of prayers to her self and divine meditations, defying death (because she had her only trust in Christ Jesus), tyll Sunday y^e^ 14^th^ of October, 1638, when in y^e^ forenoone, about a quarter of an howre past 10 of the clock, she renderd her spirit to God y^t^ gave it her, w^th^ great joy to her self, but w^th^ excessive greefe to all she left beehynd her.

"After her death I found her will, as she told me, and w^th^ it a letter w^th^ this superscription: 'To my sonne S^r^ Roger Twysden, to rede when I have ended speaking:' full of motherly affection, shewing much love and goodnesse to all her children; w^th^ it was in another paper what blacks, what prise they should be of, and to whom they should bee given,—and this she did to avoyde all unkindnesse any might tak at what her executor should else have done, it beeing true and a thing I never knewe fayle y^t^ else no executor shall ever give content; and, though perhapes I could not punctually observe her appoyntment in this, yet, having beestowed on none lesse then y^e^ note or bill willed, none could hold me other then blamelesse. And this was by very many held a marvelous wisedom in her, appoynting her funeralls pryvate, y^e^ expence they should come to, y^e^ blacks should bee given. All w^ch^ appeeres by y^e^ will, letter, and paper, w^ch^ I keepe in a box together.

"She was daughter to S^r^ Moyle Finch of Eastwell in Kent, and Elizabeth Heneage, created by King James Viscountess of Maydstone, and by King Charles Countess of Winchelsea, to her and heyres, by w^ch^ creations her children had y^e^ same honours and priviledges as if their fathers had enjoyed these dignyties. She was born y^e^ last of February, 1574 or 1575: she was in her youth bred with her grandmother y^e^ Lady Heneage at the court of Queen Elizabeth, w^ch^, not at all loving to have knowne, made her nothing y^e^ wors wife, y^e^ sayd Lady and S^r^ Thomas her husband marying her to my father at Heneage House nigh Aldgate, beeing very young, a^no^ 1591, about y^e^ end of September or beegining of October, y^e^ day I yet have not. She was y^e^ handsommest woeman (or at least as handsome as) I ever saw. She had a lyght brown hayre, her skinne exceeding fayre, the freshest colour in her cheekes y^t^ was imagin-

able, in so much as I have herd some say, y^t^ perhaps would have spoken not to the best grace of her, that she had y^e^ best whyte and red they ever saw, w^ch^, joyned w^th^ excelent favour, could not but produce much lovelynesse. It shall suffice to conclude this poynt w^th^ this truth, y^t^ never any pycture drawer could draw her nigh so well as her self was; she was very straight and tall, but exceeding small bones, neyther was any defect you would wisht otherwise, but y^t^ y^e^ negligence of a nurse (she having very young a fall) made her have hurt in y^e^ nuckle boan of y^e^ left side, so y^t^ she had a little lamenesse in her going, w^ch^ was not much discernable whilst she was young and light, hardly, if she list, discernable; but after, growing heavyer w^th^ fatness, much trouble to her; and, what is very observable, she allwaies looked young; at her dying, w^ch^ was in her 64 yeere, her colour was fresh and good, her skin extream white, smooth, and lovely, her face, take away her teeth, w^ch^ were somewhat decayed, not unlovely in one of 30 yeers. Beeing young she was lean,—after about 40 she grewe fat. Her mind far outwent her body; she was as wise a woeman as I ever knewe, her spirits wondrous quick,—active, and of a profound judgment, deepe seeing into any matter, and though she could not, by reason of y^t^ lamenesse I spake of, goe over her house in person, towards her latter end, yet was it strange to see how she knewe every thing spent in it, in so much as, if she list, there should not bee an egge mist but she would know it. She was all her life given to much sitting, heavy bred, and bottle-drink-full of meditations; if not y^e^ best, one of y^e^ best, natures I ever met with; a weak body, and in some kindes very timorous, yet w^th^ out any fear of death, and in those cases where it was fit for a wise woeman to shew resolution, of a most undaunted spirit,—in so much as I have herd her affirme, she did not care to

lye in prison all her life rather than pay shipmoney, a matter, as she conceived, of very ille great consequence, and beegun in her tyme,—in so much as I my self, once for London, and once for y^e^ country, did earnestly persuade her to pay it,—and more than those two tymes she never did.

"She was wonderfully religious, pious, virtuous,—she was so chast as she was by many held too curious,—her maxime was, y^t^ woeman was to blame of whome there could bee any suspicion, and, therefore, she never was with any man (except her husband, and when she grewe in years, perhaps her children,—and y^t^ rarely,) but she had some woeman by in y^e^ roome, or at least the doores open, and in sight of her.

"She was thrifty, yet very noble in her disposition;—excelent to contrive any building or to adorne an house.—She had the best way of expressing her mind in writing, w^th^ y^e^ most facilyty I ever met with in woeman,—indeed it might be incredible should I say I never saw man indite better letters then I have read of hers, yet, perhaps, they who knewe her best would least suspect it of untruth I now say of her."

Sir Roger,* eldest son of Sir William and the Lady Anne, was

* Sir William's other children were:

1. Thomas, born Jan. 8th 1601-2, made first a Sergeant at Law by Cromwell, then imprisoned by him for the vigour with which he defended the corporation of London, who had retained him. Then advanced to the bench, and finally made a baronet by Charles the second. He married Jane Thomlinson, sister of Colonel Thomlinson, who commanded the guards at the execution of Charles the First, and to whom he gave the ribbon and George, upon the scaffold. By this lady he had eight children. Sir Thomas was reputed a sound lawyer and an upright judge. He died in 1682-3.

2. William, born 1605, died unmarried 1641. Several interesting letters from him while travelling in Italy are yet preserved.

3. John, a doctor of physic, and author of one or two learned works, a member of the College of Surgeons; born 1607, died 1688, unmarried.

born in 1597, and was consequently thirty-one years of age when he succeeded to the baronetcy. There is some probability that he may have received the rudiments of his education at St. Paul's school, under the venerable Alexander Gill,* but unhappily the researches which have been made on this subject have not been crowned with success. More certain it is, that he entered as a fellow commoner at Emanuel College in Cambridge. Of his university career beyond this, there is no record; but among his common-place books is one which, both from the hand-writing and the selection of subjects, in all probability belongs to this period of his life. If so, it shows how early his mind took the peculiar bent which afterwards distinguished it, and in what manner he trained himself for the historical studies in which he was at a later time to excell: it shows also at how early a period he had made himself familiar with French, Italian, and Spanish authors, and how ready a command he had obtained over a vigorous and not inelegant latinity. He does not appear to have taken his degree at Cambridge, nor is there any account of him from the time when he went to the university till that when he succeeded his father; but it may be conjectured from the results of his riper years that he had bestowed no inconsiderable pains upon the study of the civilians and canonists, as well as the laws of England; whether

4. Francis; born 1609-10, died 1675, unmarried.

5. Elizabeth; born 1600, was married to the celebrated Sir Hugh Cholmondley, and had issue: she died in 1655.

6. Anne; born 1602-3, was married to Sir Christopher Yelverton, and had issue: she died in 1670.

* Author of the "Logonomia Anglica," "A treatise concerning the Trinity," and "Sacred Philosophy of Holy Scripture." Dr. Gill was an eminent theologian, and one of the best Latinists of his day: I think I see traces of his training in Sir Roger's Latin. He has, I believe, also the honour of having, as Head Master of St. Paul's, introduced a very improved system of education into that most distinguished school of philologists and divines.

under the ancestral oaks of Roydon Hall, or in one of the inns of court I know not; nor even whether, like most young gentlemen of the day, he had visited foreign countries, in order, by a view of their manners and institutions, to confirm himself in the love of our own. But wherever made, his studies were sound, earnest, and complete, and in good time they bore fruit of power.

For some years after his father's death, Sir Roger lived quietly at Roydon, or in London with his mother, and his rent-books and journals give proof that he manfully and carefully discharged the duties of a landlord, such as they were in far more patriarchal times than these. Not a stick of timber on the estate, but Sir Roger knows its real value; not a shaw to be cut, or an oak to be felled, but he is on the spot to enforce the covenants of his leases, and guard the interests of his tenants as well as his own. Strange things trouble him too sometimes; there is a suit about pews in Peckham church, which he finally wins against the Weldons,—*fons et origo malorum!* He has a trial against a neighbour for a watercourse; he turns out a bad tenant from a mill—rogue as he was; for, in Sir Roger's affectionate language, *she* was a good mill, and had made the fortune of more than one tenant; rogues in grain perhaps they too, but they paid their rents, and wound up with four hundred pounds,—no rogues in Sir Roger's books they!

And to Maidstone market he sent his hops; and thither he went also to meet his brother justices of the quorum, to do right between man and man, and to grumble, on fitting occasion, at being assessed too high to the militia, or in the composition for his Majesty's household: two light-horsemen was extravagant, one was enough; especially as his father paid no more,—and so on: one bushel of oats to the King's table was too much for his estate, three quarters of the sum had

been paid from time immemorial (perhaps even from the time when kings eat the oats that were raised for their table), and no more would he pay. But he had still severer duties: the insane conduct of the crown lawyers was driving the nation into rebellion: the generous acquiescence of the people, and their patience under a long course of misgovernment, had deceived those wretched instruments of wrong into the belief that Englishmen, like spaniels, would fawn the more for beating; bad precedents—and unhappily such there were—derived from times which no sound lawyer could have recognised, were rapidly laid hold of, and actively enforced. Finch suggested ship-money, and his hint was caught at with exultation. For some time Sir Roger seems to have been more than ordinarily passive on this subject: he even persuaded the energetic Lady Anne to pay for two years in succession this impost, which he knew to be illegal, for quietness' sake. Perhaps for a while the sense of kinsmanship induced him to take no active part against the course suggested by a near relative. But he was studying the question profoundly, and finally made up his own mind to be distrained, if they would, but not to pay. The various entries on this subject are among the most valuable in his journals, and tend to shew that the selection of Hampden's case was carefully calculated by the crown lawyers, in order that the adverse decision in the Exchequer (upon which they reckoned, through some anticipated weakness in his plea,) might be used against the far more dangerous action of Lord Say in the King's Bench. That things turned out altogether otherwise than either party anticipated, only adds to the interest with which we follow, step by step, the rise and fall of opinion on such subjects. Ship-money, however, drove Sir R. Twysden to look very closely into the nature of imposts, and the authority by which they are levied; and

we owe to it, not only a vast number of well-blotted leaves, stuffed with examples from Germany, France, Italy and Spain, but also from the earlier English annals. These sketches for a picture of ancient taxation did not appear ultimately, as they would have done had they been comprised in an essay on that special subject. But a wider vista had opened before the view of the strong thinker: as he read and thought, the matter became clearer, and, though some time elapsed before every thing found its proper place, yet the contents of innumerable scribbled pages, the results of many hours of intense manual labour, and of much mental struggle, are finally elaborated in the treatise which hereafter follows. Even at this day, I believe them to be well worth the attention of constitutional lawyers and, if there be any real distinction between the terms, historians.

In January, 1635, Sir Roger married Isabella, daughter of Sir Nicholas Saunder, of Ewell, near Nonsuch, in Surrey, and eventually coheiress of her brother Henry Saunder. By this alliance he became connected with a number of noble and ancient families,* for even the blood royal of Thomas de Woodstock ran in her veins. In a worldly point of view, the match was perhaps not very advantageous; for Sir Nicholas Saunder was involved in Sir Hugh Middleton's scheme for supplying London with water from the New River, and, like many other adventurers, sunk all his fortune

* Sir Nicholas was descended from a younger branch of the Saunders of Charlwood, and, through the frequent intermarriages of heireses with his family, he lineally represented several illustrious houses, whose arms he thereby quartered with his own, viz. Salaman, Collenden, Carew of Bedington, Peverell of Ermington, Willoughby, Dalamere, Marston, Carew of Bedington (a younger branch), Fitzstephen, De Courcy, Twyte, Digon, Stuteville, Mohun, Fleminge, Brewer, Hoo, D'Andeville, St. Leger, St. Omer, Malmaines, Wells, Engayne de Grainsby, Waterton, Corbet, Byran, Blunt, Bostock. The Twysdens, by this marriage with his daughter Isabella, became entitled, at the death of his son Henry without issue, to quarter all the abovenamed coats.

in it, and was utterly ruined. But all Golconda could not have added to the worth of Isabella Saunder, and, whether Sir Roger chose wisely or only luckily, he had reason to thank God for having given him the perfection of all earthly blessings in an excellent wife. In the days of trouble on which her husband and family fell, she displayed in the fullest light the heroical qualities which are often united in good women with the utmost sweetness of temper and tenderness of disposition. During his incarceration, she shared his prison, waiting upon him with all a wife's devotion, and submitting with patience to every privation; for him she made difficult and dangerous journeys backwards and forwards, when far advanced in pregnancy, and at seasons of the year when the roads were hardly passable, and the climate is most inclement: for him she braved the insolence of the enemies of her house and their agents,—petitioned, implored, nay confronted and defied committees and parliaments. Well might her husband say that she had been the salvation of his estate! Yet was she a tender and delicate woman, of great piety, and of exemplary patience and humility. How dearly she was loved in return, and how honourably repaid with the full heart of her noble husband, the following affecting entry in his journal of 1657, will testify; it would be a sin to omit a record which displays so beautifully the piety and amiability both of herself and the writer.

"Isabella Saunder, daughter of S^{r} Nicholas Saunder, of Ewall, in Surrey, by Nonesuch, marryed to me y^{e} 27th day of January, 1634 (*alias* 1635), mother of sixe children, three male, and three female. . . . . left the miseries of this life at a little howse of myne in y^{e} Dean's Yard, in a little court in Westminster, y^{e} 11th day of March, 165$\frac{6}{7}$, about 6 of y^{e} clock in y^{e} afternoone, or rather not so much, but very nigh y^{t} howre; the day in w^{ch} shee dyed beeing Wensday; and

was brought downe and buryed by my father in our little burying place in East Peckham Church, y^e^ Tuesday following, beeing y^e^ 17 day of March, 165$\frac{6}{7}$.

" She was a person of y^e^ most virtue and fewest vices I ever saw; she was trwly religious and fearing God, serving him allways in spirit and truth, after y^e^ auntient manner of th' English Church, as it was reformed by Queen Eliz. and King James; this seasoned all her other actions, and made them such as were acceptable in y^e^ sight of God and good men. She had a very discerning judgment, and w^th^ that a temper beeyond imagination, and with it an affectionate nature to all, especially such as loued her or me, of whom, if that can bee a fault, she was too fond, and so of her children: w^th^ what patience she for my sake endured the loathsomness of a most nasty pryson, called y^e^ Counter, in Southwark, that she might have my company onely; w^th^ w^ht^ wisdom she sollicited then and afterward my buisiness at committees, and at the howse of commons sometymes itself; w^th^ what magnanimyty she went through those miserable tymes (in w^ch^ it was enough to be undone, not to bee so foolysh, as not to consent or run madly to our owne ruine, y^t^ beeing the undoubted mark of a malignant,) I shall not heere write, beecause indeede I haue not words to expresse it. She was not at all unwilling to dye, in so much as when, she growing weaker and weaker, my cosen Burnaston told her she feared she was not a woeman, she took the words out of her mouth, and added herself, ' Of this world: God's will bee done; hys name bee ever praysed.' I was unfortunately in y^e^ country when she fell sick of her last sickness; she had beene ille of a cold, but was prety well recoverd agayn, but y^e^ night I went away was stricken w^th^ death, though they conceived it onely a cold. On Tuesday y^e^ 10 March, they sent a messenger of

purpose for me; I saw there was then no delaying, but went so early as I was with her about 10 of y^e^ clock; found her much spent, her eyes to haue lost her naturall quicknesse, yet God gaue her then a little lightning beefore death; was joyd to see me, received y^e^ Sacrament, y^e^ viaticum, w^th^ me, w^ch^ done shee kissed y^e^ minister and us about her to take her leave of us, told me wee should meete in Heaven; I never saw any receive y^e^ Eucharist w^th^ more reverent devotion; then growing neerer her end desired to bee layd to rest again, beeing heavy as nigher her tymes end. About three of y^e^ clock she awaked agayn; knewe me; I kist her and she me, but I could not well understand her speech, but as I since conceive it was y^t^ she might dye quyately, w^ch^ she did, laying her self again to sleepe, but never waked more in this world. When I kist her, w^ch^ was y^e^ last I ever did whilst she lived, she gaue me many kisses together, so as I told her, heere is y^e^ old kisse styll; she smiled, as what she knewe she did use to doe.

"She was of a weak constitution, very sickly, in so much as sometymes, jesting w^th^ her and saying in sport, not long beefore her end, 'If God ryd me of this, for a second wife I woulde take no thought,' she, as conscious of her owne weaknesse, replyed, 'Mock not, it may bee sooner then you think;' and so it happened.

"I may not forget after her death she retayned y^t^ amyable pleasing sweetnesse in her countenance she had living; I could not absteyn from kissing her to see it, God suffering her body carry to her coffyn y^t^ lovely aspect to shew how deere and pleasing her soule was in hys sight. Lord, make me live as she lived, and truly fear God as she did, that I may dye as she did, y^t^ I may attayn that happy crowne she is now in possession of!

"I may not forget to these many guifts of mind she had a very

weak body, often sickly or rather alwaies sickly, often sick very desperately, at least since her last child Charles seldom well: when I lay in Lambeth, eyther from y^e^ contagion of many coming into it after y^e^ fight at Naseby, or seeing S^r^ George Burckly, whom she saw in hys extreamyty ready to depart, or anxiety of mynd to see me w^th^ out any hope of freedom, she fel into a sicknesse w^ch^ ended in a double quartan ague, after w^ch^ or rather perhaps her ill childbed of my youngest boy Charles, she had lesse her health then beefore, though God lent her me about 12 years after, yet ever weak. Her goodnesse I can not expressse, her piety, mildness, temperance, not to bee styrd, not at all passionate, sweetnesse of nature, judgment, justice, fellow-compassionateness, patience, humilyty, yet well understanding herself and her dwe; they who best knewe her can onely judge of her humbleness. I shall only giue this one example: After some of her great journeys into Kent, w^ch^ she undertooke for my buysnesse and so very wisely sollicited, seeing her ille and great w^th^ child, I haue sometyme sayd, 'What an unfortunate man am I y^t^ haue brought a gentlewoeman to such a deal of mysery for my sake!' she would take me up, as intymating and saying she would endure much more for my sake. When I was first sequestred I kept a man to wayt upon her; after I could not, w^ch^ she was so well content w^th^ as nothing more. She was y^e^ saver of my estate. Never man had a better wife, never children a better mother."

The time was now come when the country gentlemen were to bestir themselves for the salvation of England, if still it could be saved. In 1639, matters had proceeded to such a pitch that an irresistible feeling prevailed against the mismanagement of the court, and a universal call for a parliament arose from every part of England. With a bad grace Charles yielded, and the writs were issued for a

parliament to meet early in 1640. To this parliament Sir Roger Twysden was returned, together with Sir Norton Knatchbull; * the circumstances of his election are interesting, and show the high estimation in which he was held by his neighbours in the county.

"M^dm, y^e 16^th of March 163$\frac{9}{40}$ I was chosen knight of this shire for y^e parl^ut summoned to beegin y^e 13^th of Aprill following; w^ch, beecause it was carryed w^th great contestation beetween my self and a neere kinsman of myne, S^r Edward Deryng of Pluckley, I have for posterytys sake thought good a little to note y^e manner of y^e carying of it.

"When first y^e speech of a parlyament so long expected beegan about y^e end of Mychaelmas terme 1639, many men were spoken of as fit to stand to bee knights for Kent. Amongst y^e rest myselfe was inuyted to be one, w^ch I declyned, as beeing a matter of great expence, and indeede not thinking y^e country would chuse me; so I ever put it off as alltogether vnworthy of it, yet professing I would bee most glad to doe y^e country all seruice. Some weeke after this, S^r Henry Vane, the treasurer of hys Ma^ties howsehold, my cosen germin, came to hys howse at Fayrlane, and opened hymself so far vnto me y^t hee had a purpose of standing for it, y^t I promised hym all y^e assistance lay in me, knowing hym a man truly deuoted to God and hys countryes good, and y^t had perswaded the king to this course. And so I exprest myself vnto hym y^t I did not doe it w^th y^e least intentyon hee should diminish in ought y^e religion now establisht by law, nor the liberties of y^e subiect; beesides he promised me y^t if hee were knight of the shire I should serue in y^t burges place w^ch he as a pryuy counsellor would not bee destytute

* See Nalson.

of, in wch I could doe my country as much seruice as in this or any other, all beeing equall in ye howse. Trwly the common people had been so bytten wth shippe money they were very averse from a courtyer. I dealt wth all my neighbours effectually, and had promis of many, yet could I not bee confident of hys beeing elected; I did therefore think ye best way of facilitating it was to get all elce but hymself and one more sit downe. Mr. Knatchbul of Mersham Hatch, Sr George Sonds, and Sr Thomas Walsingham did stand from ye beegining; all these but ye first, who had ye greatest vote from ye beegining, out of their affectionat respect to Mr. Treas'r, sate downe, beeing both deputy lieutenants. Sr Edward Dering had at ye first writ to me to stand to bee one myself, wch I refused, and gaue hym all ye arguments lay in my power for doing so; afterward coming to London, finding hym there, I did wth strong importunyty presse hym to bee for Sr Hary Vane, and did then conceive hym as firme for hym as any man; and if ye affirming hee was a little ingaged to Sr Tho. Walsingham, and a profession he held ye Treas'r a fitter man to doe ye country good, yt he would not stand hymself, but would doe reason, yet he could not absolutely giue a promis tyl ye assizes, beecaus 16 gentlemen of them had affirmed sollemnly he was not one yt did beefore yt ingage hymselfe any way, and this on assurance Sr Tho. Wals. would sit downe,—if, I say, all these were tyes, it is most true hee had promised me to bee for Sr Hen. Vane.

"At ye assizes Sr Hen. Vane writ vnto me to vnderstand ye sence of ye country. I went thither, as satisfyed he would be chosen wth out opposition, seeing Sr Ge. Sonds and Sr Tho. Wals. out of respect to hym sate downe, as ever I did anything in my life; but coming thither I found Sr Ed. Dering speak more cooly of it then I expected; after supper there was certainly some pryuate consultation

beetween hym, Mr. George Stroude of Westram, and Isack Bargraue Dean of Canterbury, and y^e^ next day a resolution publisht y^t^ he would stand. I must needes remember y^t^, beeing prest in my hearing to say whether he would stand or not, he y^e^ first night sayd he could not tell; it seemes he resolued on it y^t^ night.

"I tooke this so vnkindly to see so little respect of y^t^ w^ch^ I tooke hym to have promised me to assist me in y^e^ atteyning of for a kinsman allmost as neere hym as myself, I could not refrain myself, but told hym of it very playnly, and acquainted Mr. Treas'r with all y^e^ proceedings, who instantly resolued not to stand hymself, but writ to me w^th^ all y^e^ rest of hys friends heerabouts to set vp myself and oppose Dering. This was a troublesome taske; all y^e^ gentlemen of Kent were ingaged allready for Knatchbull. Dering, after y^e^ assizes, did neuer lye styll, but ride vp and downe solliciting euery body, yea such as were for S^r^ Henry Vane he strove to get a promis of, y^t^ he giuing out they should bee for hym. What should I doe? To publish to friends by letter y^t^ I intended to stand, was to meet w^th^ a certayn denyall from them whose assistance I desired. I could doe no more but this, to giue out to my friends y^t^ if I were chosen I should take it for a great fauor, and doe y^e^ county all seruice lyeth in my power, y^t^ I could not conceiue they would chuse so worthlesse a man as myself am, and such like, but neuer write or send purposely to any man for to procure me any voyces."

Sir Edward Dering was nevertheless defeated, and Sir Roger elected for the county. On this occasion the celebrated Biondi wrote him a letter of congratulation, the autograph of which is in the hands of his family.

It is well known what expectations were entertained from this parliament, than which a graver and wiser assembly had never met.

At a much later time the great historian of the Rebellion thus described it:

"It could never be hoped that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill purposes with them; nor could any man imagine what offence they had given which put the King to that resolution (viz. to dissolve it). But it was observed that in the countenances of those who had most opposed all that was desired by his Majesty there was a marvelous serenity; nor could they conceal the joy of their hearts: for they knew enough of what was to come to conclude that the King would be shortly compelled to call another parliament: and they were as sure that so many grave and unbiassed men would never be elected again."—Clarendon Hist. bk. ii. p. 56.

What moved the King to dissolve this parliament is unhappily but too obvious: it was the treachery and falsehood which he manifested at every moment of his life: he had called the parliament for the redress of grievances, upon which they (knowing his character but too well,) insisted, before proceeding to a grant of supply. Had they voted this, they were well assured that they would have been dismissed without being permitted to inquire into the causes and remedies of the popular discontents: the mouths of the people would have been closed, Strafford would have calmly proceeded to organise his standing army, and Charles might have had the satisfaction of abolishing parliaments altogether. But the extravagant demand which the King made through the treasurer, Sir Harry Vane, alarmed the House,* and upon their refusal to comply, the King—in a fit of

* The conduct of Sir Harry Vane on this occasion has been greatly impugned. Many have accused him of treachery to the King, or at least of grave mismanagement. Bramston says, "When the parliament met, a kind of offer was made of buying off shipmoney, by

little less than insanity—dissolved the parliament, after a session of but three weeks.

To the Long Parliament, which met in the autumn of the same year, Sir Roger was not returned, his kinsman Sir Edward Dering having on this occasion succeeded in displacing him. Why he should have failed or retired, does not clearly appear; perhaps he would not take the trouble to canvass, or disapproved of the practice; perhaps he was not prepared to go the lengths which were expected from members by the country, which the King's last measure had so justly exasperated.

granting the King three subsidies in lieu thereof; the popular orators made such harangues as inclined the maioritie of the House of Commons to stand stiffly to haue grievances redressed before any supply was granted. And Sir Henry Vane the elder, either as a knaue or foole, playd the king's cards so ill, that there was noe right vnderstanding betweene the King and the House of Commons in that matter. And yet I haue heard Mr. Porter, my brother (whoe serued in that parliament as burgess for Maldon), and others say, if they had binn permitted to sit awhile longer, they had complied with the Kinge in some good measure. But the Kinge, guessing otherwise, dissolued that parliament, very vnhappily for himselfe and the kingdome."—Autobiog. p. 65, 66.

Charles, when he returned to his senses and perceived the fatal mistake he had made, did, it is well known, disavow Sir Harry Vane: but unfortunately this King wanted that first essential to a gentleman, the love of truth, and his assertion on this subject can prove no more than that he repented of the step he had taken, and would gladly have shifted the responsibility upon other shoulders. It is extremely improbable that Vane should have mistaken his measures; he was a man of much experience and good sense, and was thoroughly acquainted with the wishes of the people. Nor is it likely he acted with treachery. In the first place, he had himself advised the King to call a parliament, and for reasons of his own he was interested in its continuance: without it he could not hope to wreak his vengeance on Strafford, whom he persecuted with an energy not the less furious for being inflamed by merely personal motives. That he could desire to embroil the King and the Parliament is not to be imagined for a moment: he knew the relative strength of the parties far too well. I have little doubt that he was directly compelled to do what he did, and that when this failed—as it was sure to do—Charles with his usual honour endeavoured to make him the scapegoat. It was indeed rumoured at the time that Laud or the Queen herself were the King's chief advisers in this most fatal conjuncture. See Whitelock, Mem. p. 34; Dugdale's "View," p. 61.

It might be curious to speculate what would have been the result had Sir Roger gone up to Westminster in place of his unsteady cousin;* but it was otherwise decided: he remained at his country seat, discharging the duties of his station, but anxiously watching the progress of events; while Dering, carried away by an ill-grounded enthusiasm, was joining the most violent of the opposition, and doing his utmost for the overthrow of the established church. But he saw with undisguised alarm the encroachments of the Parliament upon ancient constitutional rights; he seems indeed to have been so deeply acquainted with our ancient constitutional history, as not to have comprehended the position of the Parliament at this juncture. No one now can doubt that their circumstances forced them irresistibly to a line of conduct for which the previous history of Parliaments could supply no precedent. But the committal of Laud, the proceedings against the bishops, and the abolition of deans and chapters, filled Sir Roger with disgust and terror; the numerous impeachments of judges and ministers of state alarmed him; and he looked upon the attainder and execution of Strafford as an unconstitutional act, and as a fearful precedent against the liberty of the subject. There is no reason to suppose that Sir Roger would have defended the acts of that bold, bad man, or lamented his ruin; but to make that treason by a new statute which was not treason at common law, or by 25 Edward III. was a proceeding which shocked the just man, and the master of constitutional law. Could he have

* Clarendon paints him (perhaps not quite justly) in two lines: "A man of levity and vanity, easily flattered by being commended."—Hist. bk. iii. p. 95.

The subsequent fate of this unfortunate gentleman is instructive. He quarrelled with his former friends, was expelled the house, and went into active opposition, in his county. For this he was impeached, but escaped and joined the king; by him and his party he was treated with contempt, and finally died in misery.

felt a little more respect for the King, or have shut his eyes to the gross illegality of his past government, Twysden would, very probably, have gone out with Falkland: but he liked neither party well enough to take a decided step in favour of one or the other. By degrees however the encroachments upon which the Parliament were absolutely forced in self-defence more and more alienated Sir R. Twysden from them. Though closely connected with Dering, Vane, Cholmley, and other earnest parliamentarians, it is probable that he was looked upon with merited suspicion by the popular leaders; he was, from his personal character and his position in one of the most important counties, a man greatly to be feared; and prudence required that they should take the first opportunity of disarming, since they could not conciliate, him.

The ordinance by which the Parliament took the command of the militia from the King completed Sir Roger's detestation of their proceedings, and it is likely that from this time he expressed himself very openly on the subject, and concerted with his friends and neighbours the means of making some public demonstration of their dissatisfaction. The spring assizes at Maidstone in 1642 furnished the opportunity. A petition had it appears been sent from some part of Kent, approving of the conduct of the Parliament; but the Cavalier country-gentlemen complained that this did not express the sense of the county, and determined upon presenting a counter-petition of their own. To this end, Judge Mallet was induced to recommend to the justices the forming a more respectable grand jury than it appears had hitherto been usual in Kent. Dering (now expelled the House), Sir George Stroude, and others immediately volunteered their services, and quitted the bench; but Sir R. Twysden, being in the commission of oyer and terminer, retained his seat, and

took no part in the proceedings of the grand jury. If we may trust the assertion of the opposite party, nine of the nineteen gentlemen who formed this body protested against the step, but the petition was carried by a majority of one, and ordered to be circulated through the county for signature. I am not aware that the text of this celebrated document is to be found easily or at full in print,* and I therefore give it here entire, from Sir Roger Twysden's copy.

" To the hon^{able} House of Com'ons.

" The humble Petition of the Gentry, Ministry, and Com'onaltie of the county of Kent, agreed vppon at the generall Assizes for that county,

" Most humblie sheweth,

" That wee cannot but take notice how wellcome to this Honn^{able} House many Petitions have beene, which yet came not from an assembled body of any county as this doth. Wee doe hope to find as gentle and as fauorable reception of this as any others haue found of their Petitions; our harts witnissing vnto vs as good, as peaceable, and as pious purposes as the best. These are therefore the true and the ardent desires of this county.

" 1. Ffirst. That y^{u} will please to accept our due and harty thanks for those excellent lawes which, by his ma^{ties} grace and goodness, you haue obteined for vs.

" 2. Secondly. That all lawes against Papists bee put in due execution, and account taken of their disarming; and that all children of Papists may bee brought vpp in the reformed religion.

" 3. Thirdly. That the solempne Liturgie of the Church of Eng-

* It was printed as a separate pamphlet at the time; and being burnt by the hangman, copies are now scarce, but do exist.

land, celebrious by the piety of holy bisshopps and martyrs who composed it, established by the supreme law of this land, attested and approved by the best of all forreigne diuines, confirmed with subscription of all the ministry of this land, a clergie as learned and as able as any in the christian world, inioyed and with an holy love embraced by the most and best of all the layetie, that the holy exercise of our religion may by your authoritie bee inioyed quiet and free from interruptions, stormes, profanations, threates, and force of such men who dayly doe depraue itt, and neglect the vse of itt in diuerse churches, in despite of the lawes established.

" 4. Ffourthly. That episcopall gouernement, as auncient in this island as christianitie itselfe, deduced and dispersed throughout the christian world, euen from the apostolicall time, may bee preserued, as the most pious, most prudent, and most safe gouernemente, for the peace of the Church.

" 5. Ffiftly. That all differences concerning religion and ceremonies may be reserued to a lawfull, free, nationall synode, and, as your remonstrance promiseth, a general synode, of most graue, pious, learned, and judicious diuines, the proper agents, whose interest, gifts, and callings, may quicken them in that great work, whose choyse to bee by all the clergie of the land, because all the clergie are to bee bound by their resolutions, and the determinations of this synode to bind vs all, when y^{u} haue first formed them into a law, and this wee take to bee according to the auncient fundamentall lawes of this land, confirmed by Magna Charta.

" 6. Sixtly. That some speedy and good prouision may bee made, as by his ma^{tie} hath beene and is by all good men desired, against the odious and abominable scandall of schismaticall and seditious sermons and pamphlets, and some secure law made against laymen

for dareing to arrogate to themselves, and to exercise the holy function of the ministry, who some of them doe sow their impious discontented doctrines, euen in sacred places, by abuse of sacred ordinances, to the aduancing of heresie, schisms, prophannes, libertinisme, anabaptisme, atheisme.

" 7. Seuenthly. That if the coerciue power of ecclesiasticall courts, by way of excommunication, bee allready abbrogated, or shall bee thought fitt soe to bee, that there bee some other power and authoritie speedily established for the suppressing of the haynous, and now soe much abounding sinnes of incest, adultery, fornication, and other crimes, and for the recouering of tythes, repayreing of churches, probat of wills, church asseses, and prouiding of bread and wine for the communion, and choyse of churchwardens and other officers in the Church, and especiallie for ministers who neglect the celebrating of the holy com'union, and of pishioners for not receiuing.

" 8. Eightly. That the professors of that learned facultie of the ciuill law, without which this kingdome cannot but suffer many inconueniences, may not find discouragement, and soe desert their studeys and professions.

" 9. Ninthly. That honour and profitt, the powerfull incouragements of industry, learning, and piety, may bee preserued without any farther diminution to the clergie.

" 10. Tenthly. That y^{u} please sadly to consider the bleeding wounds of our brethren in Ireland, and with speedy succours indeauour to preserue them, wherunto his ma^{tie} hath promised a gratious concurrence.

" 11. Eleuenth. That y^{u} please to frame an especiall law for the regulating the militia of this kingdome, soe that the subiects may know how at once to obey both his ma^{tie} and the houses of $parliam^{t}$,

a law whereby may bee left to the discretion of gouernors as little as may bee, but that the number of armes, and what measure of punishment shal be inflicted on offenders, may bee expresslie sett downe in the act, and not left to any arbitrary power, and that, according to the president of former lawes, the offenders may not be tryed out of the county.

" 12. Twelft. That the pretious libertie of the subiect, the co'mon birth-right of euery English man, may bee as in all other points preserued intire, soe in this also, that no order of either or both houses, not grounded on the lawes of the land, may bee inforced on the subiects untill it bee fullie enacted by Parliam^t^.

" 13. Thirteenth. That his ma^ties^ gratious message of the 20th of February last, for the present and future establishment of the priuiledge of Parliam^t^, the free and quiet inioying of our estates and fortunes, the liberties of our persons, the securitie of the true religion professed, the maynteyning of his ma^ties^ just and regall authoritie, the establishing of his reueneu, may bee taken into speedy consideration; the effecting wherof will satisfie the desires of all us, his faithfull and loueing subiects.

" 14. Ffowerteenth. That all possible care may bee taken that the natiue comodities of this kingdome may haue a quicke vent, and that clothing and other manufactures may bee improued, wherein the liuelyhoods of many thousands doe consist, and that trade may bee soe balanced that the importation doe not exceed the exportation, which otherwise will in tyme proue the consumption of the kingdome.

" 15. Ffifteenth. That y^u^ please to frame vpp some lawes concerning depopulations, purueyance, cart-takeing, delays in justice, trafique, fishing on the coast, fulling-earth, that our seafortes may bee repayred, and our magazines renewed.

"16. Sixteenth. That y^{u} please to consider the generall pouerty that seems to ouergrow the land.

"17. Lastly. We humblie beseech you to consider the sad condition that wee and the whole land are in, if a good vnderstanding bee not speedilie renewed betweene his ma^{tie} and the Houses of Parliam^{t}.

"Our hopes are yet aboue our feares, secure them we beseech y^{u}; God direct and blesse yo^{r} consultations, for the remoueing of all distrusts and jealousies, and for renewing that tye of confidence and trust, which is the highest happines, betweene our most gratious prince and us his loueing people.

"And y^{u} shall haue the dayly prayers of yo^{r} humble orators the com̄ons of Kent.

It is desired that whosoeuer doe deliuer forth any coppy that hee doe testifie the same to bee a true coppy.

"Ffor the expediting of this petition it is desired that the gentlemen in their seuerall diuisions doe agre vppon one among themselues to receive the coppies of all those petitions, and all subscriptions betweene this and Easter Sessions, att Maydstone, and that all the gentry of Kent doe meet att Blackheath on Ffriday morning the 29th of Aprill, at nyne of the clocke in the morning at the farthest, from thence to accompany this petition to the House."

[Note by Sir R. T.] "This was publiquely read and agreed vpon at y^{e} Assizes at Maydstone, 25 March, 1642, *nemine contradicente.*"

Those who are familiar with the struggles of that time will see that almost every word of this petition was carefully selected; and that almost every word, so selected, was a direct declaration of war against the Parliament. The county of Kent,—or rather the Cavaliers of Kent—it must be presumed, both knew and calculated the effect

of their present measure. And there can be little doubt that the Houses knew it also, and were prepared to strain every nerve to answer the challenge,—the most serious, beyond all question, that had ever yet been offered them.

Their partisans were on the alert. Notice of this bold step was immediately conveyed to Westminster: on Monday March 28th one F. Jones presented to the House of Commons the heads of the articles which had been agreed to at Maidstone, and, being called to the bar, repeated his information *viva voce*. This was confirmed by Mr. D. Browne. The House thereupon requested a conference with the Lords, and desired that Mr. Justice Mallet might be ordered to attend the said conference to be examined touching the truth of the business.* Pierrepoint, Pym, Glyn, and Martin, were appointed managers: interrogatories were proposed and reported, and the House desired that the Lords would join in an order, "that Sir Edward Dering, Sir Roger Twysden, and Mr. R. Spencer, may forthwith be sent for as delinquents;" to these Sir G. Strode was added, and it was ordered that Mr. Pope, attorney-at-law, and clerk of the assizes, should be forthwith summoned to appear before the House.†

The following day the subject was renewed.

"Mr. Blunt, who was yesterday, by order of the House, summoned to appear to give his testimony about the business at Maidston, informed as followeth:

* Comm. Journ. Lunæ, 28° Martii, 1642.

† The following gentlemen were appointed a committee to meet a committee of the Lords on the subject: Mr. Pym, Sir A. Haselrig, Sir Ro. Coke, Mr. Whitacre, Sir Tho. Dacres, Mr. Sergt. Wilde, Sir Sam. Rolle, Mr. Reynolds, Mr. Jn. Moore, Sir Jo. Corbet, Sir H. Mildmay, Sir Ro. Harley, Mr. Trenchard, Sir E. Boyse, Sir O. Heyman, Sir H. Vane jr. Sir W. Massam, Mr. Peard, Sir Hugh Cholmely, Mr. Cage, Sir P. Wentworth, Sir J. Holland, Mr. R. Goodwyn, and Mr. Rowse. And the Lords thereupon appointed a proportionable committee. (C. Journ. ii. 500, 501.)

"That on Monday before the assizes something was spoken at large of having a grand inquest; besides, a grand inquest was desired by the judge. Sir E. Dering first stood up and offered himself to serve for the body of the county: some others stood up and would not serve. Sir Roger Twysden, and some others that were in the commission of oyer and terminer, could not serve. Then Sir George Stroode stood up and offered himself. Then I stood up and offered myself, because I conceived something was on foot, and I desired to see the play. There were ten of us went off the bench; we were nineteen in all, of the grand inquest. We met, and, after dispatch of the general business, a motion was made for a petition, but no heads declared, but that a petition might be framed. Myself and others spoke against it, because we should contradict the petition already delivered by the county to the Parliament. Some heads of a petition were presented next day by Sir E. Dering and Sir G. Stroode, somewhat differing from the petition: some of the heads were so high, that I wish I might not reveal them myself; and those, on my opinion, did contract them into a writing. Of the nineteen of the inquest, nine of us did protest against it; I have here their names in writing under their own hands to that purpose. Some of the heads prepared to be a ground of the petition were: That a synod be collected only of divines; that the book of Common (Prayer), penned by the inspiration of the Holy Ghost, might not be altered; that they may not be bound by the order of both Houses, touching the militia, without the King's consent; that they may be freed from arbitrary power; that cause might be shown why this House had cast Sir E. Dering out of this House; and other particulars which I cannot punctually remember: but that of the Holy Ghost, and showing cause for Sir E. Dering's expulsion, was upon debate

omitted. The petition being framed, and opposed by nine of us, they caused us to withdraw. When the petition was delivered at the bar of the grand inquest, those of us that were against it desired the judge to take notice, that they were not all of opinion with him that spoke first. They said they would post our names; we said we then would post their names. One said they would meet on Blackheath, 23rd April, with 40,000 people." * A copy of the petition was then read: the House thanked Mr. Blunt, and ordered the following persons to be summoned as delinquents: Mr. Crumpe, a minister, for being very active in framing the petition; also R. Amherst, Tho. Brodnox, Bonham Fance, R. Hardres, H. Oxenden, Steph. Lennard, Thos. Catlett, and Thos. Roper, were ordered to attend the House.

This account of Mr. Blunt will perhaps explain the statement of Sir Roger that the petition was passed *nemine contradicente*: not being present, he may have been ignorant that the dissentient minority were "caused to withdraw." It is remarkable that under such circumstances he should have been at once selected by the Parliament among those whom they intended to prosecute for this step. Sir Roger constantly asserts that he had nothing to do with the petition: in strict legal language perhaps he had not; it could hardly have been brought home to him in a court of justice; at the assizes he was not one of the grand jury that passed it. But I am greatly mistaken nevertheless if he was not,—I will not say, only of counsel with those that drew it,—but if the greater part of it was not actually from his own hand. The recurrence of favourite phrases of his own is unmistakeable; and the spirit and tendency and courage of it are his beyond a question.

* Co. Journ. Die Martis, 29° Martii, 1642.

The Parliament clearly saw this, and treated him with a severity which otherwise one could not understand; they must have been well aware that Dering and Stroode were not their most dangerous enemies in Kent.

On the first of April 1642, the matter of the Kentish petition was resumed in the Commons House of Parliament.

"The Sergeant being demanded what was become of those warrants that he had to serve upon S^r^ E. Dering, S^r^ George Stroode, Mr. R. Spencer, and S^r^ Roger Twysden, etc.

"As for three of them, they were ready at the door; only Sir E. Dering, who was served with the warrant, and promised to come away with his man the next day.

"Mr. Spencer being called to the bar, the copy of the petition framed at Maidston, he read it over, and said, It was near the same that was there attested, but said, It was but an embryo; and did desire that he might not be prejudiced by that which was never preferred to the House; the petition was again to be brought to the quarter sessions, and that, since he found it to be distasteful to the Parliament, he endeavoured to stop it.

"He was commanded to withdraw, and to attend the committee of both houses, to examine these businesses.

"Sir G. Stroode was likewise called in to the bar, and Mr. Speaker told him, that he doubted not but he knew wherefore he was sent for: it was concerning a petition framed at Maidston, in Kent, in which he was very active. He does confess he knew of such a petition, that he enclosed a copy of it in a sheet of paper, and sent it by Mr. Pope to the judge of that assize, who told him he should be glad to see it: and he said unto him, if he thought good, to show it to the Earl, and he thinks the judge knew his meaning by

it (the Earl of Bristoll he meant). He confesses this is his hand to this petition showed unto him. Sir E. Deeringe was the first man went off the bench to be of the grand jury, and he was the second. The judge said, 'I will not command you; if you do it, you do a good work to your country.' That he had no speech with the judge before the assizes, concerning the grand jury or the petition. That the sheriff did return a grand jury, but doth not remember that that jury was called.

"Sir Roger Twysden was likewise called to the bar; and, after he had kneeled awhile at the bar, Mr. Speaker acquainted him, that he was sent for concerning a petition framed at Maidston in Kent. He confesseth he did subscribe that petition; but had no plot or design in it; nor knew of it, till I came to the assizes; it was table-discourse the first time I heard of it. The judge said, it was very necessary to have a good grand jury; it seems he knew the matters better than I did; but he never named in my hearing what the great business was wherefore he desired a good grand jury; and in Kent there is ever as mean a grand jury returned as in any county whatsoever. There were near two thousand men present when this petition was propounded. If there be any thing done that is displeasing to this honourable House, he is very heartily sorry for it; and humbly desired that he might be bailed." *

On Monday April 4th, Sir Edward Dering appeared at the bar, and was interrogated; and on the 7th of the same month,

"Resolved upon the question, That Sir R. Twysden and Sir G. Stroode shall be put out from among the commissioners for the county of Kent, named in the Bill of Scandalous Ministers." †

* Com. Journ. Die Veneris, 1° Aprilis, 1642.

† Com. Journ. Jovis, 7° Aprilis.

After petitioning the House to be enlarged on bail from the custody of the Sergeant at Mace, on the 9th of April,

"It is this day ordered, upon the question, That Sir R. Twysden, Knight, and R. Spencer, Esq. now in the Sergeant's custody, shall be forthwith bailed, upon the security of 10,000 pounds the principals, and 5,000 pounds a piece the sureties; and upon condition that they shall appear at all such times as they shall be required, upon 24 hours' summons; and that they shall not go into any part of Kent; nor Sir Roger Twysden above ten miles from the city of London; nor Mr. Spencer further from London than the Lady Pagett's at Drayton;

"Ordered, That this House doth accept of Sir Jo. Wolstenholme and Mr. Sandys to be security for Mr. Spencer, and likewise of Sir Robert Filmer and Francis Finch, Esq. to be security for Sir Roger Twysden." *

The House then proceeded with vigour against the other parties, and on the 18th voted that Sir E. Dering should be impeached; three days later, the articles of impeachment were sent up to the Lords. In fact, the Parliament was not at all at ease in respect to this petition; they had, it is true, removed the leading Cavaliers of the county, and so, as they hoped, paralysed the movement; but the Kentish squires were not yet beaten. On the 21st of April, Mr. Peard reported a conference with the Lords concerning this subject.†

"The Lord Keeper delivered the subject of the conference in writing, viz.

"This conference is desired concerning the Kentish petition, upon the informations my Lords have received, that it is yet by the

* Com. Journ. Sabbat. 9° Aprilis.

† Com. Journ. Jovis, 21° Aprilis.

malignant and ill-affected party, with great, though secret industry, carried on; and not only in that county but in some others of this kingdom: and as it may have an ill consequence and a dangerous effect, in the disturbance of what the Parliament hath settled for the present safety of the kingdom, the desire of the Lords is, That the delinquents, and such as have been actors in this petition, may speedily be brought to their trial: and that forthwith there may be a declaration unto the kingdom, that whosoever shall be found to further or to countenance this petition or any other of the like nature shall be held to be disturbers of the peace and quiet of this kingdom, and justly liable to the censure of Parliament, and those that shall discover and give information of such practices shall be reputed to do an acceptable service to the King and Parliament."

A message was immediately sent up to the Lords agreeing to such a declaration. The same day, it was reported to the Commons that the petition would certainly be presented, and that it would be accompanied by at least 7 or 8,000 men; Pym and Hollis were accordingly at once sent up to the Lords, to desire that an order of both Houses might be issued to Sergeant Major Skippon and the Committee for the Militia of the City of London, requiring them to have an eye and a care to prevent all inconveniences that might ensue by the tumultuous and disorderly gathering together of any multitudes, to the disturbance of the public peace.

On the last day of April, however, a considerable multitude found their way to the door of the House, and the petition was presented by Captain Lovelace and Sir William Boteler, on behalf of the county of Kent.* The presenters were immediately committed, Lovelace to

* Com. Journ. Sabbat. ult. Aprilis.—Verney's Notes, p. 175.

the Gate House, Boteler to the Fleet: * the rest were reprimanded and dismissed.

On the 5th of May a counter petition, got up in Kent, was presented, and on the 10th articles of impeachment were exhibited against Sir George Stroode and Mr. Spencer. The Houses might now imagine that the mischief was past, and felt inclined to receive with favour a petition from Sir Roger Twysden, to have the restrictions upon his freedom of movement relieved. Accordingly on the 12th we find this entry in the Journals:† "Resolved, upon the question, That Sir R. Twysden shall have leave to go to his house in Kent; and that his bail shall be renewed, and a new bond taken, with the clause left out of his not going into Kent."

On the 17th of May Sir Roger returned to his country seat.

Five days later the Lord Keeper Littleton fled from London, and carried the great seal with him to the King.

The Parliament continuing to receive information that great discontent prevailed in Kent, and having reason to suspect that a new demonstration would be made at the Maidstone assizes in July, thought fit to send down a Committee of the House, comprising sixteen gentlemen connected with the county, with written instructions purporting that the object of their coming was to preserve the peace therein, and calling upon all justices of the peace to be aiding in the same.‡ In Sir Roger's journal are some entries relative to the transactions at this assizes, which afterwards again involved him in trouble, and led, not only to his incarceration, but to the serious dilapidation of his estate by fine, felling of timber, and sequestration.

* Lovelace and Boteler were bailed towards the end of June, the principals in 10,000, the sureties in 5,000 pounds each.

† Die Jovis, 12° Maii.

‡ Com. Journ. Die Veneris, 22° July, 1642.

The Committee, coming armed from Westminster with the Parliament's instructions, immediately proceeded to confer with the Kentish justices, and claimed to take their seats upon the bench. But they were met by a determined opposition on the part of the justices, who denied that there was any disposition to disturbance in Kent, or that the Committee had any right to sit among those who derived their authority under the great seal. Sir Roger thus describes the matter: The justices, he says,

"Upon the same afternoone fell into a sadde and serious consideration what answer was fit for them to returne. One was drawne; but, as that which issues from heads of differing tempers doth not ever pleas all (but is eyther too long, too short, something or other will want, or abound), so that, thus framed, was cast on the table, where it lay, as y^{t} was not approved, yet none taking it in hand to reforme; upon this I tooke it up, thinking onely to abbreviate it for my owne satisfaction, as indeed I held it somewhat too long; when I had done I read it to them, and, I know not by what fate, it was generally so well liked as, very few words altered or added, it was delivered to the Committee.

"The answer of y^{e} Justices of Peace, the sayd 25th July 1642.

"1. That the first demand beeing grownded, as wee conceive, upon misinformation, and in it a great aspersion layd on this county, wee not knowing of any such endeavors as are expressed, it beeing, as wee hope, likely to continue in a secure peace; his ma^{ties} Justices of y^{e} Peace, having their auctoryty committed unto them under the great seal of England, dare not, in y^{e} execution of it, joyn wth any not so authorised.

"2. That beeing demanded this Committee may sit upon y^{e} bench for y^{e} performing y^{e} commands of y^{e} Howse of Commons (unknowne

to us), wee doe not know what place may be sutable to the authoryty and trust they represent; nor that wee have power to place any on y^e^ bench, not sent thither by y^e^ like auctoryty wee sit there."

Naturally enough the Committee were much dissatisfied with this answer, and on the following day, July 26th, Sir Norton Knatchbull ("an honest gentleman") rejoined on their part, insisting upon an immediate obedience to the Parliamentary commission. The same afternoon the Committee came down to the bench, but found Mr. Judge Mallet and the justices not disposed to give way, and Sir Harry Vane, who was chairman of the Committee, and appears to have conducted himself with great tact and moderation, thereupon retired from Maidstone to his house at Fairlane. What passed after this, I shall relate in Sir Roger's own words.

"After this I retyred to my lodging, intending to make myself ready to goe to my howse; but, hearing a very lowde shute, I went down to y^e^ bench, and found divers young gentlemen, vizt. S^r^ John Mayny,* S^r^ John Tufton,† S^r^ Edward Filmer,‡ Mr. William Clark (slayn afterward in the King's army),§ had brought with others certayn instructions to y^e^ knights of y^e^ shire, to acquaynt the Parlyament w^th^; w^ch^, w^th^ a petition by them likewise presented, were to bee sent hys Ma^ty^ at Yorke. When I came, these had not beene read nor received by any. The clark or hys agent refused y^e^ doing of it; they beeing offered to me, I excused the accepting, in reguard

* Of Linton Place, near Maidstone; he commanded the Royalists, in the gallant defence of Maidstone against Fairfax, in 1648.

† Eldest son of Sir Humphry Tufton of the Mote, who was one of the commissioners appointed by the Parliament to go down into Kent on this occasion.

‡ Eldest son of Sir Robert Filmer, and brother to the first baronet of that name.

§ He was of Ford in Wrotham. He fell at the early age of 36, in the skirmish a Cropredy Bridge, where he commanded a regiment raised at his own expense.

persons beefore me were on y^e^ bench,—Sir John Baker, Mr. Spencer, etc. At last a young youth (I think y^e^ undersheriff's clark) was got to read them; some Parlyament men sitting amongst others on y^e^ bench (having shewed no mislike whilst it was in reading), at y^e^ conclusion of all, desired to know whither they were conceived to sit there as justices of peace; for, if so, they must protest against whatsoever had thus past; it was answered they were not understoode to have approved any thing they heard. These instructions were sent to the knight of y^e^ shire * by Mr. George Chute and some other; but he would not take them. I heard they were after throwne unto him.

"And, beeing indeede full of resentment, did require Mr. Augustine Skinner, as their servant, to certify the Howse of Commons, there was no grownd for such an information as had beene made of y^e^ county, desiring the informer, of what qualyty soever, might receive condigne punishment. Then, as loyall subjects and good patriots, they require hym to offer their humble advise for y^e^ settleing the distractions of y^e^ tymes, w^ch^ might bee in giving hys Ma^ty^ satisfaction in four particulars:—

"1. In leaving y^e^ towne of Hull in the same state it was beefore S^r^ John Hotham's entrance.

"2. In laying aside the militia tyll a good law may be framed.

"3. That y^e^ Parlyament bee adjourned to an indifferent place, where hys sacred Ma^ty^, all y^e^ lordes, and y^e^ members of the Howse of Commons, may meete w^th^ honor, freedome, and safety.

"4. That hys Ma^ties^ navy may be immediately restored unto hym.

* Captain Augustine Skinner of Tutsham Hall.

"To these advises were joyned certain reasons and y^e^ petition beefore mentioned, w^ch^ beeing after printed at York and London I shall forbear farther to mention, then that on Thursday the 28th July, S^r^ John Mayny, hys brother in law Mr. Richant, S^r^ Edward Filmer, S^r^ Thomas Boswell, Mr. Clark (after S^r^ William Clark, slayn at Cropready Brydge June y^e^ 29, 1644), carryed to hys Ma^ty^ at York what had beene thus concluded; from whense it was by y^e^ presse divulged; but at London, where the Parlyament bare rule, it was stopt, divers copies taken from y^e^ printer, and few suffered to bee vented, none exhibited unto them."

On the 2nd of August, the Parliament, in high dudgeon at this new insult to their authority, required Sir G. Stroode, Sir R. Twysden, and Mr. Spencer, to be surrendered by their bail: * and on the 5th Sir Roger, appearing before the House, was immediately committed to the custody of the Serjeant-at-Arms,† who sent his prisoner to the "Three Tobacco-Pipes," near Charing Cross: here Sir Roger remained for a fortnight without being examined or brought before the House. In the meanwhile, as his share in the events at Maidstone did not appear to be very decided, his friends made interest for him, and, although on the 10th of August a petition which he presented failed of success, ‡ on the 24th the House resolved, "That Sir Roger Twysden, now in the Sergeant's custody, be removed from thence to Sir Hugh Cholmely's house at Chiswick: § and that he give good security not to depart above three

* Com. Journ. Martis, 2° Aug. † Com. Journ. Veneris, 5° Aug.

‡ The humble petition of Sir R. T. who is in restraint in the Serjeant's custody, for his liberty to go down into the country, was read: and, the question being put, it passed in the negative. (Com. Journ. Merc. 10° Aug.)

§ Sir H. Cholmely of Whitby, Yorkshire, Sir Roger's brother-in-law, was at this time a zealous Parliamentarian. It is well known that he afterwards deserted their cause, and

miles from thence till the House take further order." * This proposal, however, Sir Roger thought fit to decline: to use the words of the journal,

"One came and told me the House was willing I should goe to my brother Cholmley's at Isleworth, w^ch^ I absolutely refused, seeing that must bee but to make another sute I might bee released thence; onely I desired I might bee charged w^th^ y^e^ breach of any law; to w^ch^ the answer was, 'In these tymes the Howse could not looke at y^e^ nice observance of law;' I replied, 'That might bee w^th^ those *qui belli sunt participes*, where the armies lay; but for those did not at all engage, *contra hos nullum est jus bellicum*,' and alledged Grotius for my opinion.† Whilst I continewed there, I grewe acquainted w^th^ two noble gentlemen, S^r^ Basil Brook and S^r^ Kenelme Digby, persons of great worth and honor, who, whilst they remayned w^th^ mee, made the prison a place of delight, such was their conversation, and so great their knowledge; but S^r^ Kenelme Digby was soone released, his innocentie appearing to y^e^ Close Committee; and y^e^ other, having compounded w^th^ y^e^ Serjeant and payd his fees, was remoeved to y^e^ King's Bench; where, though he were received by a very honest gentleman, the Speaker's brother, yet hys charge was far greater then w^th^ me, paying at first 3^li^ per weeke for hymselfe and man in his howse, w^ch^ after was reduced to fifty shillings; w^ch^ beeing constantly payd, I have heard hym sometymes say, he was as well as at hys owne home. But this summe, however it might perhaps not bee great for the one to receive, yet was excessive for hym, whom

surrendered Scarborough Castle, of which he was governor, to the Queen, at a very critical conjuncture.

* Com. Journ. Merc. 24° Aug.

† De Jure Belli et Pacis, lib. iii. cap. 17, § 1.

the Parlyament had stript of all, to pay; and might be one cause, wth other vexations, of concluding hys days in that prison." *

On the 30th of August, a counter petition, numerously signed, was sent up from the county of Kent,† and the House, having thus carried its point, listened to milder measures. On his petition Sir Roger was again enlarged upon bail (Sept. 12th, 1642); but not without the prudent warning on the part of his friends on the Parliamentary side, to abstain for a while from revisiting Kent. This he was at the time little disposed to do, and had even conceived the intention of travelling upon the Continent, to which end he had provided himself with a passport; but the accidental death of his kinsman Sir John Finch, who was to have accompanied him, disappointed this plan; Sir Roger accordingly retired to his house in Redcross Street, where he spent the ensuing winter of 1642. Here, in the neighbourhood of the Tower, he was able to continue his researches into the national history, and to correct and confirm his views by the aid of authoritative documents. Sir Roger Twysden's familiarity with Record evidence is very great, as the pages of his "Considerations" amply prove; and we can hardly regret that he was removed from his county at a troublous time, and fixed, even against his will, in a situation where he was enabled so widely to extend his means of enduring usefulness. He was, however, not one of those who are fated to rest, and possessed, perhaps, an over-abundant share of that noble stubbornness which, if it has occasionally betrayed Englishmen into extravagances, has certainly in the course of centuries enabled them to build up such a political fabric as the world has never seen elsewhere, and as very few of our contemporaries yet comprehend.

* MS. Journal.

† Com. Journ. Martis, 30° Aug^{t}.

The increasing necessities of the Parliament had led some of their more zealous supporters to a plan of *benevolences*, quite as illegal and irregular as any that had been denounced when enforced by the English kings. The city of London, principally by the means of Pennington, the mayor, had volunteered to equip and maintain a certain number of soldiers for the service of the Houses, upon the guarantee of the public faith;* and this offer having been accepted, the city authorities, who were all devoted to the Presbyterian leaders, set energetically to work to raise sums from all the citizens, upon a plan of subscription which it would be a very farce to call voluntary.

A demand of 400*l.* was consequently made upon Sir Roger at his house in Redcross Street, as the amount of his 20th part due under the ordinance, and by the consent of the city. It was in vain that he pleaded his non-liability and his non-capability, asserting that he was no citizen, but merely a casual inhabitant of London, with other reasons equally satisfactory to himself and inconclusive in the eyes of the City Commissioners; who at last, seeing that argument was of no avail, sent men and carts, and distrained what plate and furniture

* An overture was made by "divers (in the city) under the style of affected persons, that they would advance a considerable number of soldiers for the supply and recruit of the Parliament forces, and would arm, maintain, and pay them for several months, or during the times of danger and distractions; provided that they might have the public faith of the kingdom for repayment of all such sums of money which they should so advance by way of loan." An ordinance was immediately framed, and passed both Houses: "That all such as should furnish men, money, horse, or arms, for that service, should have the same fully repaid again, with interest for the forbearance thereof, from the times disbursed. And for the true payment thereof they did engage to all and every such person and persons the public faith of the kingdom."—Clarendon, vol. ii. p. 60. Immediately upon this ordinance being published (Novr. 29th 1642), "the active mayor and sheriffs appointed a committee of such persons, whose inclinations they well knew, to press all kind of people, especially those who were not forward, to new subscriptions: and by degrees, from this unconsidered passage, grew the monthly tax of six thousand pounds, to be set upon the city for the payment of the army."

they could find at the house in Redcross Street. This strong measure probably succeeded, for Sir Roger himself says, "So I think they had the 20th part, for they left nothing worth ought beehynd." The journey into France now again presented itself as the best way of escaping from the inconveniences of a position, perhaps, as painful as any that a constitutional and loyal gentleman can be placed in;* but the negociations for the treaty of Oxford having been opened, there was some hope that an honourable compromise might be effected, and that both parties might disarm, with sufficient security for the future. How these negociations were defeated by the King's insurmountable duplicity is well known: the sword was again drawn, not to be sheathed until every constitutional guarantee had been destroyed, and the weary nation had unanimously risen to break the instrument which had been formed to liberate, but had remained to enslave. The journey then to the Continent alone remained, and upon this Sir Roger determined. As it is my principal aim to give some insight into the policy and feeling of that party, which has been much neglected in almost all our histories of the civil war, it will be instructive to cite from Sir Roger's journal at this time some of the reasonings and arguments by which men were determined upon the course they adopted.

"When I was newly freede, Sir Francis Barnham,† a right honest gentleman, and a very noble friend of myne, desired to speak wth me, w^{ch} he did at the Temple. The effect of what he sayd was, to

* Sir Roger Twysden was not the only gentleman who, being unable to join either party, desired to leave England for a time; we have seen that Sir John Finch entertained this intention, and Evelyn obtained licence to do the same. In fact the country gentlemen felt that it was impossible to save a king who never spoke a word of truth in his life; and yet could not arm against him, or remain neutral between the two parties.

† Of Hollingbourne Hill, near Maidstone, and M.P. for that town.

perswade me to give somewhat, on y^e^ propositions, that the House of Commons would goe very high against such as did not joyn with them would maynteyn any man did ought against the disaffected party; that S^r^ John Sedley * and S^r^ Anthony Weldon † now ruled all Kent; and many other such weighty reasons as might come from a person of great wisdome and judgement; to all which I could onely answer, that the thing alone restreyned me from giving was y^e^ point of conscience; that y^e^ Howse of w^ch^ hymself was a member had urged me to promise I would defend the liberties of the subject; that I held nothing more against them then to have men forced from their estates for fear; that I had, out of that respect, when I was not tyed w^th^ a protestation, refused shyp-money; that to give now would shew I did it not then out of other then a refractory spirit or some sinister end; that I saw, if this war continewed, it would prove y^e^ ruine of y^e^ Protestant religion and y^e^ lawes of y^e^ land. Beside, I did not love to have a King armed w^th^ booke law against me for my life and estate. He told me to y^e^ last, it would not bee possible, should hys Ma^ty^ come in a conqueror (w^ch^ I wisht not), he could in so generall a defection take away all men's estates; but there would be some means found to gayn a generall pardon for y^e^ lives and estates of y^e^ most, as had beene in former civil wars; that hymself had given, and shewde me the manner of it. That it was without y^e^ least thought of doing ought against y^e^ King, his person or power, but for conserving no other than y^e^ lawful and just rights of y^e^ subject, and added in effect that of S^r^ Edward Cooke, *Salus populi suprema lex*.‡ To w^ch^ I

* Of the Fryars in Aylesford, near Maidstone, father of Sir Charles Sedley, the celebrated wit and roué of Charles the Second's time.

† Of Swanscombe and East Peckham; an hereditary opponent of the house of Twysden.

‡ Lib. 10, fol. 139 b.

answered that of y^e^ same auctor, *Optima regula, qua nulla est verior aut firmior in jure, neminem oportet esse sapientiorem legibus,**—that those which had somewhat must be onely the losers by these wars. I have made the more particular mention of the discourse I had w^th^ this worthy gentleman, not onely to shew what reteyned me from joyning w^th^ the Parlyament, but y^t^ the reader may see how men of wisdom, honesty, and judgment, w^ch^ none y^t^ knewe hym can deny to have beene dwe unto hym, wer at first led away by y^e^ protestations, promises, and pretenses, of those who ment nothing lesse then that they held out to y^e^ world.

"About the beegining of 1643, S^r^ Christopher Nevil, a noble gentleman and my very worthy friend, came to me, told me there would be no abode for us in y^e^ Parlyament's quarters; and not long after, going to see hym, he shewde me a proclamation † sent hym w^th^ advise from Oxford, of not at all complying w^th^ y^e^ Parlyament; that his sister Goring had received y^e^ like; that he was resolved to get a passe and goe out of their quarters; that if I would, he could procure my name and my wives to bee inserted in it. I profess I was at first sight amazed to see a king not able to giue protection to his people, yet declare it high treason to pay any assessment or contribution unto them, as y^t^ w^ch^ was ayding or assisting of them, prohybyted by y^e^ Act of the 25 Ed. III. And where y^e^ Parlyament ‡ (for so men now called y^e^ two Howses) had publisht a sequestration of y^e^ estates of those had voluntaryly contributed to hys Ma^ty^, not lying under y^e^ power of any part of hys army, the King in this adds no qualyfication whatsoever; and yet I have beene taught

* Lib. 2, fol. 3 b.

† Oxford, April 7th. See Collect. of Orders, ii. 27, 28.

‡ Oxford, April 1st. See Collect. of Orders, ii. 13.

since,* the giving ayd in such a case not to have beene treason. By this all men saw, if hys Ma^ty prevayled, they must looke for nothing but y^e extreamyty of law, w^ch in so generall revolts princes have seldome put in execution, and never fortunate in professing beeforehand; as indeede what effect did it produce? but by making y^e adverse party more firmely combyne against hym from whom they expected no favor, in y^e end was a cause of hys utter ruine. Some tyme after this, I asked Mr. Adrian Scroope what course he tooke (being y^e Duke of Richmond's steward) to preserve hys lord^ps goods at Cobham? He protested unto me, he durst take none; having received an expresse charge from my lord y^t he should not; and yet, says he, I know there is a picture of hys mother's he values above anything. By all this, I saw the King was in good earnest, had he prospered; and y^t men w^thin y^e Parlyament's power must deal warily not to forfeit all.

"But to S^r Christopher Nevill; first giving him many humble thanks for hys kind offer, as it well deserved, I answered, 'That I had no estate in y^e world but what lay w^thin the Parlyament's quarters,—that I had a wife and five small children, beesides old servants to provide for, left me by my friends, w^ch I could not shake of,—that staying heere I might hope to get somewhat; but going to the King I did certaynly expose myself to their fury that resolved (for ought I saw) y^e ruine of all men's estates could not joyn w^th them,—that I was not (for certaynly so I tooke myselfe) w^thin any y^e words of y^e ordinance for sequestrations,—that I should not contribute to them willingly, that what was forced from me the King in justice could not take amisse,—that my body was not able to

* Coke, Instit. iii. p. 10, § "It was." See 6 Ric. II. cap. 3, stat. 2.

endure y^e^ toyle of war, and should bee ashamed to live in Oxford and not bee in y^e^ army,—that of this I had good experience in my youth, when I was both more able and had fewer to care for then now,—that for these reasons I durst not accept hys kind offer. But if he went one way, I would another;' beeing resolved to goe into France, against w^ch^ I thought there could be no exceptions, the law of Ric. y^e^ 2^d^ beeing repealed.*

"Upon this I intended to hastene my journey to those parts; and y^e^ 15 of May, 1643, some friends of myne going thither, I sent my eldest sonne, then not much above seven years old, w^th^ them, and Hamnet Ward, now Doctor Ward, as tutor w^th^ hym: meaning myself speedyly to follow them."

However, to escape from England was not so easy a matter, especially as he was still only at large on bail: so, although furnished with a pass from the council,—which, it has been said, he had obtained at an earlier period,—he determined to disguise himself, and traverse Kent together with a company of Frenchmen and Portuguese, who were moving to embark in that direction. He had no doubt calculated upon the assistance of friends in the county; but still he had foes there too, who were now the ruling parties. His hope of escaping their vigilance was defeated; having left London on the afternoon of June 9th, 1643, he and his company arrived at Bromley, where for their misfortune they found the Committee of Kent sitting, consisting of Sir John Sedley, Sir Anthony Weldon, Sir Henry Heyman, Sir Thomas Walsingham, Augustine Skinner,† Mr. James,‡ Mr. Boys, and others. At first Sir Roger denied his

* 5 Ric. II. cap. 2.

† Augustine Skinner, Esq. of Tutsham Hall, in West Farleigh, near Maidstone. On the expulsion of Sir E. Dering, he was returned to Parliament in his place.

‡ Of the Court Lodge, Ightham.

identity, which led Sir Anthony Weldon to make one of the grim jokes of that time: "he sayd, if I were not S^r^ Roger Twysden, I was a rogue, and ought to bee whipped," a dilemma we shall admit to be natural enough, seeing that Sir Roger's passport was made out in his own name.* He was forthwith despatched to London by the Committee, and on his appearance before the House of Commons, was by them committed to the Counter at Southwark.† One charge brought against him, it seems, was that he was conveying important intelligence abroad, concealed in nutshells; and this absurd story (as far at all events as the nutshells are concerned) he accounts for by saying that he really did carry with him some antidote against infection put up in some such receptacle. He had been but a little while confined in prison when he learnt that his estates were laid under sequestration, his rents ordered to be paid to a receiver, and his timber felled. How deeply this last insult must have affected him, will be clear to any one who consults his journals, and observes the almost parental care which they manifest, in almost every page, for his woods and shaws.

Very shortly after these events, the aspect of military affairs took a most unexpected turn in favour of Charles's arms: on the 18th of June, Hampden had fallen at Chalgrave field; on the 31st Newcastle routed Fairfax in Yorkshire: a fortnight later Sir William Waller's army was defeated by the Lord Wilmot; and on the 27th of July, Bristol, with its ample stores and strong garrison, surren-

* At another and later part of his journal Sir Roger denies that he had any passport at all, saying he had left the one from the Council in London: that he had a false one from the Lord Mayor, in order to pass the city gates, and that he meant to slip through as the attendant of one of the strangers who had a passport for two. There seems some confusion here in his own account of the matter.

† The warrant to Samuel Warecoppe, keeper of that prison, bears date June 10th, 1643.

dered to the King. It was now fully expected that the royal forces would advance at once to London, which Essex would have found much difficulty in defending. Many of the most eminent Parliamentarians were disposed to treat for peace, and conditions were discussed, and an *ultimatum* settled with that view.* At this time, probably to secure such important hostages, Sir Roger and other leading Cavaliers were transferred to the shipping riding in the Thames.†

But the folly of the King's advisers ruined the favourable prospects which so many successes had opened: Charles in an evil hour for himself, instead of marching to London, sat down before Gloucester, and the resolute defence of the "fair city" soon changed the aspect of affairs; the Londoners, relieved from immediate danger, passed from doubt and dismay to the extreme of confidence; and ere long the City trainbands, far from remaining at home to defend their gates, or secure better terms of capitulation, were on their march to the

* "As it is certayn there was at this tyme no party considerable of y^e^ Parlyament's, but those w^th^ my Lord of Essex, to oppose hys Ma^tye^, and hys men perhaps dishartened; yet there is no doubt they, w^th^ such as y^e^ City would have lent hym, might have beene enough to have made honorable conditions, not to have left y^e^ City and kingdome wholly to y^e^ rage of a conqueror, and fury of an army. And I remember I heard some citizens then to have been designed for the treating w^th^ the King; and it was spoke by some, of no mean note, they must buy their peace, did hys army looke this way, on any termes; and I have beene told from y^e^ mouth of one then in great auctoryty, it was resolved in y^e^ Close Committee (for y^e^ Howse did nothing but what they first projected), upon y^e^ King's march hitherward, they had such conditions prepared privately as would have beene accepted." (MS. Journal.)

† The warrant for delivering the bodies of Doctor Fairfax, Sir Roger Twysden, Captain John Hichwell, Dr. Middleton, and Dr. Layfield, to George Hawes, Master of the "Prosperous Sarah," to be kept in safe custody as prisoners on board the said ship, till the pleasure of the House be signified to the contrary, bears date August 10th, 1643, and is signed by Lenthall, as Speaker. The next day but one they were removed on board.

Severn to raise the siege of Gloucester. Charles now abandoned his object, and from that moment all was over:

> Ex illo fluere ac retro sublapsa referri
> Spes Danaum, fractæ vires, aversa Dei mens!

The circumstances of those whom the now triumphant Parliament had got into their hands were not improved by the change. As yet cruelty had not stained the banner of either party, and it is indeed honourably characteristic of the contending forces that few men perished save in open fight, as long as the King and the Presbyterians retained the management of affairs on either side. But confiscation or sequestration, and imprisonment, were employed with some liberality: the shutting up or ruining any one who may in person or in fortune be dangerous, is a right of all belligerents; and, whatever Sir Roger Twysden may say to the contrary, he really could hardly hope to pass for neutral. His imprisonment in the "Prosperous Sarah" lasted it is true but for two days, when he was by order of the House remanded to the Counter, a change hardly for the better as prisons generally then were, and as he elsewhere describes this particular one to have been;* and, as soon as it appeared that Charles really meant to lose his time before Gloucester, all the prisoners were remanded to their prisons on shore. During his confinement, Sir Roger's brother Francis, and Dame Isabella his wife, were not idle, but no redress could be obtained, as far as his estate was concerned. However, after petitioning once or twice in vain to be removed from the Counter to Ely House or some other prison, he at last succeeded in being transferred to Lambeth, through the interest which his brother-in-law, Sir Christopher Yelverton,†

* See p. xl.

† Son of the celebrated Sir Henry Yelverton, Baronet, of Easton Mauduit in the county of Northampton.

made with Mr. Richard Knightley, Chairman of the Committee for Prisoners: shortly after which Francis Twysden was himself arrested and shut up on a frivolous charge of holding intelligence with the continent, but released at the end of a month.

By one of those revenges which the "whirligig of time" brings round, the Master of Lambeth was the celebrated Leighton, who had been so brutally mutilated by sentence of the Starchamber. He seems to have been a kind-hearted and good man, fond of money, as Sir Roger complains, but not harsh or unfeeling towards his luckless prisoners.* Still a prison is a prison, in spite of Lovelace's

* Sir Roger's account of Alexander Leighton is interesting. He says, "My keeper was one Alexander Leighton, a Scot, who writ himself Dr. of Phisick, sometyme heretofore a divine, no ille-disposed person, but an earnest Presbyterian, and one who had not many yeeres beefore beene censured in y^e^ Starchamber for a booke called 'Zions Plea against the Prelacy;' but now, to shew their greater contempt of y^e^ Archbishop, had y^e^ keeping of Lambeth House (by order of y^e^ 5 January, 164$\frac{2}{3}$, from y^e^ Lords and Commons), committed unto hym for a prison . . . . . I parted w^th^ very great kindnesse from Doctor Leighton; the man beeing no ille dispositioned person, but one who loved the Presbytery, and loved money." Sir Roger uses a strangely moderate expression to denote the horrible sufferings inflicted upon Leighton by that execrable court; but perhaps the censure of the Starchamber was too well understood and appreciated to require any nearer definition of the diabolical spirit of vengeance with which the sentence was passed, or the unparalleled cruelty with which its full rigours were inflicted. Laud—who as a bishop should have known himself precluded by the canons of the Church from being a judge in any cause which could lead to penalties involving death or mutilation—took off his cap in the court, and returned thanks to God, when the sentence was pronounced! In pursuance of it, Leighton was severely whipped, exposed on the pillory, where one of his ears was cut off, one of his nostrils slit, and one cheek branded with hot irons, and the letters S.S. "sower of sedition:" the very next week, ere the wounds inflicted upon every part of his miserable frame were healed, he was again dragged forth, again severely whipped, again pilloried, his other ear cut off, his other nostril slit, his other cheek branded with hot irons, and in this state he was committed to prison, where he languished for eleven years. He was released by the Long Parliament, and compensation was attempted to be made for his sufferings: but exhausted nature could not endure the change. He died soon after, both body and mind having given way; not however in 1644, as most of his biographers assert, but in 1646, as we learn from this journal of Sir Roger Twysden. His son, by another curious freak of fortune, was the learned, pious, and amiable Archbishop Leighton.

argument, and Lambeth, though not altogether devoid of comforts,* was a costly residence to one whose means were grievously reduced by sequestration.† So that at length, after many vain attempts to bring his cause to a legal trial, and much hopeless resistance to the Kentish Committee,—who by his account seem to have dealt very coolly with the Houses of Lords and Commons, and done pretty much what they pleased in their own county,—Sir Roger determined upon a total submission. Early in 1645 he caused intimation of this to be given to his friends in the House of Commons, and, after entering into a heavy composition for his estate, was finally released, and allowed to return into Kent: on the 9th December, 1645, the House ordered that he should be bailed, and on the 20th of February, 1646, he availed himself of this permission, and left Lambeth, having paid Leighton's demand. He now removed to a lodging in St. Anne's Street, Westminster, where he remained for two years, and in May 1649 he obtained an order from the House that his sequestration should be taken off on payment of a fine amounting to £1,500 (instead of £3,000, at which he had been originally assessed), and this was afterwards somewhat reduced, in consideration of annuities

* Sir Roger had what our continental neighbours call an "apartment" of four rooms, for which twelve shillings a week were demanded of him. But on his settlement with Leighton, at his release, the twelve were reduced to eight shillings a week.

† The Parliament to their great honour did not proceed as some modern Emperors and Kings have done, but even when they sequestered a malignant's estate assigned at least a fifth part of it for the maintenance of the wife and family. A very little management was generally sufficient to cause the mansion and park to be called this fifth, and thus many a family retained its ancestral home. Thus was Roydon Hall assiged to Dame Isabella Twysden. (See the order of the Committee of the House of Commons, Sept. 6th, 1644.) An admirable speech of Sir Symonds D'Ewes, in favour of moderation towards delinquents, is preserved among the Twysden papers. It is a full and excellent specimen of parliamentary eloquence in the seventeenth century.

and other charges.* Sir Roger ultimately returned to Kent on the 19th of January, 1650, broken in fortune and spirits, to find his estate wasted, his woods cut down, his tenants dispossessed, and all his cherished plans of improvement and ornament rendered vain.

During the two years which he passed as a prisoner in Lambeth Palace, he appears to have pursued his historical studies, as far as his means and the continual urgency of his private affairs permitted. There is still extant a Latin letter written by him at this time to Sir Symonds D'Ewes, soliciting the loan of books to relieve his solitude, and it was here in all probability that, in conjunction with Selden, he projected the collection of historians which he afterwards published under the title of the "Decem Scriptores."

For ten years after his return to Kent, he seems to have remained quiet at home, nursing the estate which had so severely suffered, and cautiously abstaining from any interference with public events: in literary pursuits he probably occupied his leisure, and it is likely that the treatise now offered to the Society was composed at this time.† The "Decem Scriptores," which was intended to be part only of a much larger work, was also published during this period; his coadjutors in this useful undertaking being Usher, Selden, and Somner. The "Historical Vindication of the Church of England" was also now in course of active preparation. But Sir Roger was still an object of suspicion to the army, as he had been to the House of Commons, and more than once his retirement was disturbed by searches in his house for arms and papers. On April 26th, 1651, he thus notes in his journal: "At four o'clock in the morning came

* This £1,500 was reckoned as a tenth, or two years' value. It was afterwards reduced to £1,340, and finally Sir Roger paid about £1,200.

† The last date which occurs in it is 1642.

troopers to our house at Peckham, to search, as they said, for arms and letters. For letters, there was none they cared for, yet carried away four or five of mine, and arms what was; and they carried me away, and my brother Cholmley, to Leeds castle, prisoners, for no cause, I thank Christ." On the second of May he was released, his name "not being in the list of them that should be taken;" but Sir H. Cholmley did not recover his liberty until the 16th of June. On the return of Charles II. Sir Roger was again placed in the commissions of the peace and of oyer and terminer; other distinctions were also conferred upon him; he received a deputation of lieutenancy, and was made a commissioner under the Act for "confirming and restoring of ministers." A curious note occurs in the journal of his proceedings in that capacity, as to the rude mode in which the vicar, Mr. James Wilcocks, had been ejected by the dominant Parliamentarians.

"In the examining this businesse, a question was moeved, how Mr. Wilcocks was put out,—by strength, by power, after what manner? Mr. John Horsmanden, a sober man and a commissioner, informed us y^{t} he beeing at church, Collonell Robert Gibbons (whom truly I took for one of y^{e} most favorable and civil of that side) came into the church at Goutherst, Mr. Willcocks in hys sermon, and called unto hym, (having souldiers to second his doings,) 'Sirrah! you that stand prating there, come down, or I will shoot you down!' and so carryed hym prisoner up to London. This I thought good to remember, that aftertymes may see wth what violence these men beegan." Sir Roger forgets the awful provocation which the Puritans had received from the High Church men.

But though the Restoration may have comforted the heart of many a loyal gentleman, it could neither restore confiscated estates,

nor ruined mansion houses and woods, nor replace family plate and jewels: and an "augmentation of arms" or a present of a horse were poor compensation for the scorn with which many a stout-hearted Cavalier, who had had his head broken at Naseby or Worcester, found himself treated at Court. It was also very soon obvious that Charles the Second had not learnt wisdom from his father's fate, and the sufferings of his own earlier years. His standing army, hated as such a force was by the country-gentlemen, was very large, greater indeed than any maintained by James the Second; and his lieutenants in the counties early showed a disposition to burthen the subject with demands which were illegal and oppressive. To these attempts Sir Roger opposed himself with as much determination as he had shown in resisting ship-money, or in protesting against the acts of the Kentish Committee: and the last public act we find recorded of him is his throwing up his commission as a deputy lieutenant, sooner than abet the lord lieutenant of his county in what he believed to be an illegal imposition, the providing of uniforms as well as arms for the militia. It is in truth both strange and painful to find this staunch old gentleman represented to the council as a disaffected and troublesome person, upon whose co-operation for the royal service no reliance can be placed:* but, though the pliant tools of the Court insisted that his opposition was calculated only to obtain popularity for himself with the common people of the county, we shall probably think it had better grounds, when we find them charging him with declaring publicly that their resolutions "were contrary to law, and not to be maintained but by an arbitrary power."

* Letters to Arlington, of Nov. 28th, 1668, from the Duke of Richmond and Lennox, and ten deputy lieutenants.

To the Court he appears never to have been reconciled; and, had his life been prolonged, it is not at all improbable that he might have suffered at the hands of Charles the Second insults and oppressions as severe as had been inflicted by the Parliamentary committees. This he was spared: on the 27th of June, 1672, he was suddenly attacked with apoplexy, while riding through the Malling woods, on his road to attend the petty sessions, and shortly after peacefully and calmly expired, leaving the family estates and title to his eldest son William, the third baronet of the name, who in turn highly distinguished himself in the parliaments of James the Second. With him, though in every respect worthy of his noble father, I have here no further concern.

In reviewing the life of Sir Roger Twysden, we cannot fail to be struck with admiration and respect for the extent and soundness of his acquirements, the unfeigned and active piety which was the mainspring of his actions, his support and consolation in affliction, and the steady manly character which opposed itself in turn to every unconstitutional and illegal act of the ruling power. Bullied in turn by the agents of the Parliament and the agents of two courts, he held the even tenour of his way, appealing at every step to the constitution and the laws of the land, of which, in all their greater features, he was a consummate master. He refused ship-money under Charles the First, a loan to the Long Parliament, and after the Restoration threw up his deputation of lieutenancy rather than burthen the militia with coat-money: and this he did, not because he wanted generosity, for the daily entries in his rent- and account-books show that this was no fault of his, but because all these impositions were contrary to the ancient rights and liberties of the subject. Loyal, yet not a thorough partisan of the King; liberal,

yet not prepared to go to all lengths with the Parliament; an earnest lover of the Church of England (as it existed under Elizabeth, not under Laud), yet anxious for a reconciliation with Rome, could such be effected without the compromise of any point of Bible-Christianity; a careful manager, yet an indulgent landlord; a somewhat stern and humorous man, yet a devoted son and husband, and an affectionate father; such is the picture of a man, who even to this day excites in us feelings of respect and attachment. Many a historian has gratefully turned over the pages of the "Decem Scriptores," without suspecting that its munificent compiler was deeply involved in the most momentous of our political struggles; and many a Churchman has used the "Historical Vindication of the Church of England," in ignorance of the manifold claims of its distinguished author to respect and admiration.

In truth the published works of Sir Roger Twysden give but a slight notion of the resources of his well-stored mind, or the energy of his application. To form a worthy conception of these, one should have studied the numerous common-place books in which he entered his passing thoughts, and collected the results of his multifarious reading. The margins of his books, the interleaved copies of his law-dictionary, and his many manuscript treatises, yet awaiting a competent editor, are ample evidence of his steady and mature labours. The treatise which hereafter follows is but a specimen of his great knowledge and exhaustive method. Among the most valuable of his remains, in a legal sense, are his learned Annotations on Cowell: among the most interesting, attractive, and instructive, are the journals of which such ample use has been made in this Introduction.

To the Reverend Lambert Larking, who is married to a direct

descendant of Sir Roger Twysden, the Society is indebted not only for the treatise itself which follows, but for the liberality which has placed the family papers at my disposal, for the purposes of illustration. Nor can I refrain from expressing my thanks to him for the skill with which he has himself prepared and arranged much of the subsidiary details, which to collect would have transcended my power and opportunities, and have cumbered with difficulties a task that has been one of real gratification. The history of the Civil Wars can only be thoroughly understood when we have obtained a wider insight than we yet possess into the objects and views of the country-gentlemen of England; these are now to be sought only in the private records of their families, and I trust that by degrees they will be permitted to our study. But I will venture to predict that, among them all, few will be found to contain more valuable materials for the painter of national manners, the lawyer, or the political historian, than the Correspondence, the Journals, and the Dissertations of Sir Roger Twysden.

J. M. K.

London, March 20th, 1849.

CERTAINE CONSIDERATIONS

UPON THE

GOVERNMENT OF ENGLAND.

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Of Government and the begining of Kings.

CAP. 1.

ALL creatures doe naturally love freedome, and such as are not so, for the use of man, as hee doth more especyally take care for their preservation, nature hath instructed the weaker to provide for their security by caves, denns, or other receptacles, in such sort as they are not easyly found and destroyed. But man, "animal mentis capacius altæ,"[a] finding his good not to consist in living alone, gathered into societies; the ground or basis of all government.

2. Cicero[b] is of opinion nature taught men to congregate into a body. That comonwealths, cities, and kings, were constituted that every one might enjoy justice, the weaker not oppresst by the stronger; that this office was, therefore, at first imposed on such as were held the most wise and just; agreeing with Justine, that not ambition but experimentall moderation amongst good men advanced the first kings.

[a] Ovid. Metam. lib. i.

[b] De Offic. lib. ii. fol. 40 a, fol. 47 a; et lib. iii. De Leg. fol. 144 b.

3. Tacitus[a] thinks, that after there grue a distinction of persons, ambition and power produced dominion, dominion kings, whose wills were so moderate men needed no other lawes: such was Romulus amongst the Romans, who, however hee did "imperitare ut libitum, yet did not only admit an other to be joyned with him, with whom hee had "comune et concors regnum,"[b] but soe tempered his commands that hee is as well termed "parens urbis"[c] as accoumpted their first king.

4. Justin[d] sayes, Ninus made chang of that antient way, "nova imperii cupiditate;" first making warrs upon his neighbours. Whither this Ninus were him the Scripture calls Nimrod, or Nimrod were Belus, the father of Ninus, I will not here dispute; only it seemes to mee, by Gen. x. 8, Nimrod was the first began to bee more mighty then others. And St. Chrisostome[e] sayes of him that, "abusus naturæ privilegiis alium servitutis modum adinvenit, et princeps atque rex fieri attentavit, rex enim nondum erat, cum nondum essent subditi;" and presently after shewes what kind of royalty hee assumed. "Non ut defenderet illos imperabat, sed et civitates ædificabat ut imperaret bellatoribus." Now, if Ninus were the first maynteyned his dominion by the sword, which agreeinge with that is affirmed of Nimrod by that and others,[f] I doe not see why wee should make Ninus and Nimrod differing persons.

5. The Fathers, as they fetch the begininge of kings from Nimrod, so they seeme to conceive the distinction of persons to come from those wordes of Noah, Gen. ix. 25, "Thou shalt serve thy brethren;" from whence that Father,[g] in the same place, infers, "unde postea servitus sumpsit originem, neque enim antea solebant ita molliter agere, delitiari et aliorum ministeriis indigere sed sibi ipsis ministrabant quisque, eratque par omnium honor, et ablata e medio omnis honorum diversitas."

[a] Annal. iii. p. 117. ed. in xvi. anno 1634.
[b] Livi. lib. i. fol. 4 b. [c] Lib. iv. fol. 53 d. [d] Lib. i. in Princip.
[e] Hom. 29 m. Genes. fol. 157 a. [f] St. Hieron. tradit. in Gen. x. 3, fol. 71 m.
[g] Chrisost. in Gen. hom. xxix. 155.

6. St. Augustine,[a] having learnedly disputed of peace amongst men, in families, cities, and in heaven, expresses the duty of governours thus, " Qui imperant serviunt eis quibus videntur imperare, neque enim dominandi cupiditate imperant sed officio consulendi, nec principandi superbia sed providendi misericordia." And in the next chapter hee shewes God did not give man dominion over rationall creatures, but bruite; that "primi justi pastores pecorum magis quam reges hominum constituti sunt;" and that wee doe not reade of any servant in scripture, " antequam hoc vocabulo Noe justus peccatum filii vendicaret;" meaning, no doubt, that involuntary subjection, repugnant to naturall lyberty, not that filiall obedience agreeing with it, which kings seeme at first only to have required, when their dominion, as a learned writer observes,[b] extended not much out of their owen families, but every one willingly submitted to the eldest, wisest, or justest in it.

7. But to leave this dispute, when royalty was instituted, it cannot bee denyed but the power of kings is mediate, or immediate, from God, " By me kings raigne;"[c] nether could Pilate have had any power unlesse it had been given him from above.[d] Therefore God directeth man to place it so as hee listeth.

8. But this power, though it bee originally from God, yet in respect the conveying of it to such or such a person, and the lymiting and regulating how it shall bee exercised, is not without man's intervening, but according to the politique lawes of severall countries, it is therefore by St. Peter, 1 Pet. ii. 13, called an humane ordinanc, as wee find the same thing out of severall relations said to bee the act of God and man, 1 Kings, xii. 20. The people made Jeroboham king over all Israel, yet, vers. 20, God ownes it as his proper doinge, from God originally, and directive from the people, instrumentally and collative; as the Pope, however hee is said to

[a] De Civitat. Dei, lib. xix. cap. 13, 14, 15.

[b] Lud. Vives in St. Aug. de Civitate Dei, lib. iv. cap. 6, et Justine.

[c] Pro. viii. 15. [d] John, xix. 11.

have his power from God, yet the instruments to confer it on him are the cardinalls. And

9. Out of these respects, the very making a king is often in holy writ attributed to the people. The men of Sechem and the house of Millo made Abimelech king, Judg. ix. 6; so betweene Jephta and the Elders of Gilead there was an expresse stypulation for his beeing their head, Judg. ii. 8, 9, 10, 11; and sometymes they are said to have rejected one and made another, 1 Kings, xvi. 15, 16; hee that would see more may read 1 Sam. ii. 15; 2 Kings, viii. 20; x. 5; xiv. 21; 1 Chro. xii. 38. And 2 Sa. xvi. 18, Hushay expressly joyneth the people with God in that action, which can not bee but according to the severall relations God and man have in making up one thing. And from this in the people ariseth the differing lawes and constitutions of kingdoms; some people submitting to one kind of government, others to another; some kings made by election, others succeeding by inheritance; and in some both perhaps concurring. The Israelites offered Gedeon not only to make him their king, but his sonn's sonn, restreyning it to the third generation, Judg. viii. 22; and, though God had before appoynted and anoynted David, yet the people came with a perfect heart to make him king, 1 Chro. xii. 38.

10. St. Augustin,[a] agreeinge with these many places of Scripture, sayes, it is "generale pactum societatis humanæ obedire regibus;" Jacobus Almain[b] a Parisian, that "potestas quælibet civilis et præcipue suprema, nisi tyrannidem appelles potestatem, ex libero consensu populi introducitur," and Cardinall Cajetan, [c] "constat ex electione pendere naturaliter principatum temporalem alicujus nisi sit tyranica;" which must bee understood in that sense I have beefore set of the manner how it was conveyed.

[a] Confess. to. 1. lib. iii. cap. 8.

[b] De Dominio Naturali, Civili, et Ecclesiastico, ccl. 697, ad calcem Operum Gerson. ed. 1606.

[c] In Thom. ii. q. 40, art. 1. Vide Cicero de Lege Agraria, orat. 16, n. 31, edit. Rob. Stephani, Paris.

11. To dispute therefore how the first kings came, whither by war, election, or otherwise, is to no end; it is sufficient that man did only execute the divine decree in applying it to that person to whom God had beefore designed it, yet with such qualifications (which are called lawes) as should bee added by humane policy.

12. It is most probable other people elected and set over them kings after the same manner God did appoynt the Jewes to doe.[a] The heathen did see by the light of nature the cheife ende of making them was to receive justice. "Mihi," (sayes Cicero,[b]) "non apud Medos solum (ut ait Herodotus) sed apud majores nostros fruendæ justitiæ causa videntur olim bene morati reges constituti." Servius Tullius, after the death of Tranquinius Priscus, whilst his enemys excepted against him, saying, "se injussu populi regnare," etc. before hee was declared king, did promisse the people "eum jura redditurum obiturumque alia regis munia."[c] By which, though it bee playne the Romans did conceive their kings were not without the assent of the people, and that office to bee constituted for the equall distributing of justice, yet it is farr more cleere by the word of God, where it is expresly said, "Hee that ruleth over men must bee just,"[d] and that kings are made by God to doe judgment and justice.

13. But man quickly found there was no person, at least no succession, could bee so just they would not neede some directions. And St. Augustine[e] is cleere, kingdomes without justice are no other then "magna latrocinia;" and, therfore, that every one might enjoy equall right, lawes were found out "quæ omnibus semper una atque eadem voce loquerentur,"[f] and severall formes of government instituted which I shall devide into two sorts, though I am not ignorant others doe into three, as Tacitus[g] "cunctas nationes et urbes paupulus, aut primates, aut singuli regunt," and Seneca[h] "interdum

[a] Deut. xvii. 14.
[b] Offic. lib. ii. fol. 40 a.
[c] Lib. i. fol. 12 b. ibid.
[d] 2 Sam. xxiii. 3; 1 Ks. x. 9; 2 Chr. ix. 8; Jer. xxii. 15.
[e] De Civit. Dei, lib. iv. cap. 4, 6.
[f] Officiorum lib. ii.
[g] Annal. lib. iv. pag. 166.
[h] Epist. xiv.

populus est quem timere debeamus, interdum si ea civitatis disciplina est ut plurima per senatum transigantur gratiosi timeantur in eo viri, interdum singuli quibus potestas populi et in populum data est;" both which do follow Aristotle.

14. Yet it seemes to mee, notwithstanding soe great aucthority, there may bee well said only two, Monarchical and Popular. Monarchical I divide into Absolute,—that is, when the king hath no rule but his will; and Limited,—when it is by law restreined to the good of the people, which may bee done two wayes, either when such limitation proceeds only from the good will of the prince, or when upon a stipulation or compact betweene him and his people; which some doe therefore call a mixed government, beeing monarchicall in that there is one soe supream as without him nothing is or can bee done, and democraticall in that there are others who in certayne cases joyn with him in prescribing the manner for the exercisinge his power by lawes which the monarch alone cannot alter, of which sorte are the emperors of Germany. I know Bodin [a] will not allow them to bee monarches, but for my part I shall never esteeme them other when I see them bestow honors, investitures, the cheife men of Germany no other then officers under them, all the princes of Europe admit their ambassadors to have precedence before theirs; from whence it must bee concluded hee is either the first of their rank, or some other above them.

15. Of Popular I take it there is three kinds: 1. Aristocraticall, as the Venetian, where all the dominion is at this day in the gentlemen of Venice, being those Tacitus [b] calls "primates," Seneca [c] "gratiosi;" 2. Democraticall, where all the power is in the people, and noe agent workes but as an officer or servant of theirs; such perhaps is that of the Netherlands; 3. A third sorte I conceive to bee that which is mixed, beeing Aristocraticall, in that there is a constant senate which allwaies manages the great affayres of state,

[a] De Repub. lib. ii. cap. 6. pag. 404.
[b] Annal. iv. p. 166.
[c] Seneca, ep. 15.

and Democraticall, in that some of those great officers which guide the comon-wealth are chosen by the people, such that of Rome seemes to have beene, in which not onely one consull was "de plebe,"[a] but the tribunes were chosen by them;[b] a power soe great as Augustus Cæsar, avoyding the names then beecome odious, of king and dictator, contented (as Tacitus observes) himselfe "tribunicio jure,"[c] to shew his care was the defence of the people. And though that of Tully, "omnes potestates, imperia, curationes, ab universo populo Romano proficisci convenit, tum eas profecto maxime quæ constituuntur ad populi fructum aliquem et commodum in quo et universi deligant quem populo Ro. maxime consulturum putent et unusquisque studio et suffragio suo, viam sibi ad beneficium impertrandum munire possit,"[d] denotes a government purely popular; yet, when I see there alwaies was a nobillitie, called "patres ob honores, patriciique progenies eorum appellati,"[e] called likewise "equestris gradus, patres conscripti,"[f] and ever distinguished from "plebeius ordo," and both concurring in the government, I, for my parte, cannot hold it other then a mixed state; but of these I have not here tooke upon mee to speake any thing, so that to name them is sufficient.

16. Of all formes the absolute monarchy seemeth the most antient. "Omnes antiquæ gentes," saith Cicero,[g] "regibus quondam paruerunt quod genus imperii primum ad homines justissimos et sapientissimos deferebatur," which I take to bee of the first tymes when kingdomes were concluded in a small compasse, no man haveing either an intent or cause of hurting other; "in quibus," as Seneca speakes, "non poterat potentior esse nisi qui melior, nihilque Rex majus male parentibus posset quam ut abiret e regno." Tacitus[h] notes Romulus his rule amongst the Romans was "ut libitum," as hee listed; that

[a] Livi. lib. vi. fol. 95 d.
[b] Livi. lib. ii. fol. 25 d.
[c] Annal. iii p. 134, et An. i. p. 2.
[d] De Leg. Agraria, Orat. xvi. n. 31, edit. Rob. Steph. Paris 1539.
[e] Livi. lib. i. fol. 3.
[f] Ib. lib. ii. fol. 17 e. vid.
[g] De Leg. lib. iii. fol. 184 b.
[h] Annal. iii. p. 117.

men made choise of Lawes, "post quam regum pertæsum," or, as Seneca,[a] "postquam surrepentibus vitiis in tyrannidem regna versa sunt opus esse cœpit legibus;" by which it is cleere that auctor never made question but the power of princes might bee regulated by lawes, that beeing one especiall ende of making them. "Servius Tullius sanctor legum fuit queis etiam reges obtemperarent," sayth Tacitus,[b] by which wee may see, if there bee any hold a king can have no obligation for observinge lawes, that hee doth not a little differ from the wisest of the antients.

17. From hence it may bee gathered that, as the absolute is the elder, so experience hath taught that to bee the most dureable is guided by lawes, which kings have sometymes voluntarily submitted unto for the quiet setteling their dominion. The wise Spartan[c] knewe the bounding regall auctority was not a diminishing, but making it more durable. Men indure willingly moderate bands, but when they are extream lay hould on any opportunity, even by indirect waies, to be freed of them. The Privernates suing for peace, their messenger beeing asked what peace the Romans might expect, answerd, If they gave them good conditions, "et fidam et perpetuam," but, if bad, "haud diuturnam;" which, when it was ill taken by some, the wiser did approve, as the speech "viri et liberi," adding, "An credi posse ullum populum aut hominem denique in ea conditione cujus eum pœniteat diutius quam necesse sit mansurum, ibi pacem esse firmam ubi voluntarii pacati sunt, neque eo loco ubi servitutem esse fidem sperandam;" and experience shewes us, fewe states enjoy a continewed rest where the ayme seemes rather directed for satisfaction of the governor's privat ends then the publique good of the governed.

18. This monarchicall rule, when it is so temperd with democraticall as, however the greater part remayns in one, yet it is with such a mixture as cannot extinguish the other, is in my judgment the best of all others, as that which can hardly fall into tyrany, yet

[a] Epist. 90. [b] Annal. iii. p 117. [c] Plut. in Vita Licurgi.

avoyds the ills of popular government. Tacitus[a] remembers, after the expulsion of Tarquinius, the people were forced to seeke many remedies against the factions of senators, that they might live free and at peace: that the provinces subject to them did not mislike the beeing under Augustus, suspecting the power of the people, "ob certamina potentium, avaritiam magistratuum, invalido legum auxilio, quæ vi, ambitu, pecunia turbabantur."

19. And that judicious writer[b] doth elsewhere observe, that under Tiberius, none of the best, yet at his begininge,

1. The lawes, "si majestatis quæstio eximeretur," when there was nothing of treason objected, were of good use; and yet even in that "facta arguebantur, dicta impune erant;"[c] for Suetonius[d] remembers it was a saying of his, that "in civitate libera linguam mentemque liberas esse debere," which made him with much patience endure those "convitia et famosa carmina" cast out concerning him.

2. That hee did mannage his affaires by persons of worth.

3. That hee did neither spare care nor cost the subject might not suffer for want of corne, nor bee opprest by new impositions, but pay the ould.

4. That hee did absteyne from corporall punishments, confiscations, &c.

5. That if hee had at any tyme dispute with private persons, the courts of justice and law were open.

Livy[e] notes, that after Romulus, during the Interregnum, the people did murmure, "centum pro uno dominos factos, nec ultra nisi regem videbantur passuri," etc.

That, after the expulsion of Tarquinius Superbus, such as did endeavor the restoring royaltie did use these arguments:

That a king was a man to whome one might have recours in right or injury.[f]

[a] Annal. i. p. 2. [b] Annal. iv. p. 151. [c] Annal. i. p. 46.
[d] In Tiber. cap. 28. [e] Lib. i. fol. 5 b. f. [f] Lib. ii. fol. 17 h.

That hee could favor, reward, bee angry, pardon, know a friend from a foe.

That lawes (meaning the senate) were deafe, inexorable, favoring the poore more then the potent, and if any transgresse neither affording ease nor pardon.

That it was hard, amonest so many humane frailties, to bee only protected by inocensy.

20. These reasons, and what else hee had met with, made Dio,[a] another Roman historian, write "That the name of popular government is [s]petious, but the effects nothing answerable; on the contrary, monarchy to carry a harsh sound, but most conduceable to the people's weal." For my owen parte, I confesse I think it hard so to modell any popular state as the subjects may ever receive the perpetuall protection of law, and the propriety of their goods, so free as under an indifferent monarch. The world, now above 5,500 years old, hath found means to limit kings, but never yet any republique; and though Tully[b] give those ample commendations of law that it is "vinculum dignitatis, fundamentum libertatis, ut corpora sine mente, sic civitas sine lege," etc. yet I have never observed in Rome any other esteeme of it but as it might serve their turnes who guided the people. When Fabius, desiring to avoid the consulship, pleaded a law the same man should not bee twise in tenn yeares, the tribunes answerd, "Se ad populum laturos uti legibus solveretur;" and, though hee urged "quid attineret leges ferri quibus per eosdem qui tulissent fraus fieret; jam regi leges non regere," yet hee was forced to except that charge the lawes freed him of.

21. For taxes, as impositions, excise, and such like, who shewde princes in Europe that way of raysing money, but republiques? There is not remembred to have beene a prince better skil'd in drawing treasure from his subjects then Philip de Valois in France,[c] yet to what hee did extend his power in drayninge his subjects,[d] (as,

[a] Lib. xliv. in principio. [b] Pro A. Cluentio. [c] Mattheo Villani, lib. i. cap. 76.
[d] Idem, lib. vii. cap. 4; et Giovan. Villani, lib. ii. cap. 71; lib. vii. cap. 146.

1. To permit usury, paying him 5 per cent. according to the taxe his agents layd on the lender; 2. To make the userer, on a pretence he lent more then rated, compound with him, or, being obstinate, forfit the whole; 3. To abase his coyne; 4. To proclayme that whosoever had lent upon any pawne should receive his owne, (payinge the principall only, and his oath to bee taken what that was,) however very heavy to perticuler men, were not without some collour of law,[a] usery beeing in those dayes very strictly prohibited, so as it could not bee exercised but by his royall prerogative; and when I looke upon the popular states of his tyme, theis very instances by a king who lay most heavy full of warrs, seeme to mee small in comparison. To specifie no other but the Florentine, who are so diligent in notinge these presures of his, and in perticulers remembred by their owen historians.

22. In the citty of Florence before 1293 there was no gabelle or impost layd on any thing sold in that towne;[b] yet about 40^{tie} yeares after there was, I think, hardly ought imaginable free from it: 1. Either of necessity, as flesh kild or sold alive, corne, wine, salt, &c.; 2. Of use, as baskets, scabberds brought doune the river, &c.; 3. Of pleasure, as merchandises coming within the gates; 4. The pesant to pay, after his estimation, 10^{m}. sol. per libra.; 5. The userer to compound for making profit of his money; 6. The citizen beefore a strang judge for all hee had stabil or moveable;[c] 7. Abasing their coyne;[d] 8. A tax layd on any wore defensive armes; 9. "La gabella del laccuse escuse;" which I can take for no other but that every one convented before the justice and freede, yet paid for it; 10. Taking from the sonns of those the republique had for good services rewarded, those possessions themselves had bestowed on them, without so much as suffering their reasons to bee hea[r]d by any judg whatsoever;[e] a paralell to which I doe not remmember

[a] Giovan. Villan. lib. xii. cap. 57.
[b] Giovan. Villani, lib. viii. cap. 2; and lib. ii. cap. 91.
[c] Idem, lib. x. cap. 16. [d] Lib. xii. cap. 52.
[e] Giovan. Villani, lib. xii. cap. 43.

to have met with any where; indeede the act was so strange, as the grave writer who records it could not absteyn from saying, There was both auntient and modern examples to perswade, "he mui nullo virtuoso cittadino intrometta in beneficio della republica e di popoli."

23. And in another place, speaking of those terrible imposts (I have only toucht), hee gives his countrymen this sad advise, fit to bee observed by all that have power of laying them. "O Signiori Florentini, come è mala providenza accrescere l'entrata del commune, della sustanza, e poverta de' cittadini, colle sforzate gabelle, per fornire le folli imprese? come cresce l'entrata è apparecchiata la mala spesa. Temperate, carissimi, i disordinati disideri, e piacerete a Dio, e non gravarete il popolo innocente;"[a] which makes mee call to mind the advice which Tully[b] gives all commonwealths, "Ne propter ærarii tenuitatem assiduitatemque bellorum tributum sit conferendum, idque ne eveniat multo ante erit providendum; sin qua necessitas hujus muneris alicui reipublicæ obvenerit, danda erit opera ut omnes intelligant, si salvi esse velint, necessitati esse parendum."

24. It is true princes were apt schollers, and soone followed the patternes shewde them by republiques. So Inocentius 6, 1357,[c] the first of any pope layd an impost on merchandise, etc. the court beeing then at Avignion, imitating the French king,[d] who about a yeare before had done the like, by consent of the three Estates, with some more moderation, yet what the historians of those tymes do mention as an excessive burthen. It is true King John, being soone after taken prisoner by the English, the Dolphin, governed by that councell, or rather the Parisians, it cannot bee doubted but that they did give much ayde in raysinge those tailes, which since have beene never taken of; yet the first king who got the poynt of imposing at pleasure without the assent of his estates

[a] Giovan. Villani, lib. xi. cap. 91.

[b] Offic. ii. fol. 47. ed. Aldi.

[c] Mat. Villani, lib. viii. cap. 13.

[d] Ibid. lib. vi. cap. 18; Froissard, to. i. cap. 155; Vide Franc. Belforest, to. ii. lib. v. cap. 13, an°. 1346, fol. 856 b.

was Charles the 7th, as Philip de Comines observes,[a] who got it by the help of those wise cavaliers had assisted him in his wars, which, if I mistake not his meaning, is that army which by power had prevayled so farr as to expell the English, did likewise give him strength to atteyne this greater victory over his people.

25. For theis ills in popular states, Seneca[b] is of opinion that, "optimus civitatis status sub rege justo;" and for prevention of such inconveniences in republiques, the wisest have not prescribed any way of better effect then having no officer of long continewance; but so as Cicero:[c] "Hee that obeys may hope to governe, and that rules expect in short tyme to be ruled." Livy[d] hath an observation, that "maximam libertatis custodiam esse si magna imperia diuturna non essent:" the reason why, Tiberius Cesar gives,[e] "Superbire homines etiam annua designatione, quid si honorem per quinquennium agitent."

26. Our auncestors made choice of regall dominion, this island having beene ever governed monarchically, before the Romans, and since; sometymes by many kings, and of late by one; but allwayes soe temperd, as the Commons were ever esteemed a free people. "Omnis est miseria servitus,"[f] servitude was with us the greatest misery. Cesar notes the country man of France to bee "pene servorum loco;" but of the English, Tacitus[g] observes in his tyme they were "domiti ut pareant, nondum ut serviant." And certaynly, if the Romans, who came in by the sword, had not then made them servile, it is not likely they were to the British kings. But of those tymes wee have so little knowledge (beefore the Saxons, under whom government may be thought to have here begun,) as for my part I shall give no judgment how or what it was, for indeede I find nothing I dare affirme for a truth to bee relyed upon.

27. About 446[h] the Romans neglected this island, into which a

[a] Phil. Com. lib. vi. cap. 7, p. 217.
[b] De Benefic. lib. ii. cap. 20.
[c] De Leg. lib. iii. fol. 184, 185 a.
[d] Lib. iv. fol. 58 d.
[e] Apud Tacit. Annal. ii. p. 72.
[f] Cicero, Philip. 10.
[g] In Vita Jul. Agricolæ, pag. 721.
[h] Beda, lib. i. cap. 13. Florent. Wigorn.

people of Germany, called by us Saxons, transported themselves, became masters of the greatest part of it, changed the name and language, brought into it the customes used in Germany, (as comparing that of them with what Tacitus and other writers have left of the German councells, courts, kings, and governors, is in my opinion very playn,) devided it into seaven kingdomes, which were all in tyme reduced under the West Saxon, hee makinge but one of all the Eptarchy.

28. After 875, or, as Florence of Worcester accounts, 874, the Danes prevailed in Mercia, and placed one Celulphus there, on condicion hee should resigne the kingdome into their hands when they required it of him. They, though many tymes beaten and expelled by the English Saxons, yet in the end possest themselves of the whole, and held the crowne about 24 yeares, when Edward sirnamed the Confessor, the sonn of Ethelred of the Saxon race, was againe brought in, and after him William, sirnamed the Conqueror, succeeded, whose line to the kings that now raigne hath continewed above 570 yeares; during all which tyme, if I should say there hath beene no nation under heaven which maynteyned the rights of majesty and the freedome of the people with more indifferency, I might not perhaps bee justly blamed.

29. Neither is this only the opinion of the English; Cavaliero Francis Biondy, an Italian writer of great worth and honour, in his Introduction to the Civill Wars of York and Lancaster, speakes very judiciously of the foundations upon which this kingdome is built, and the happy estate the people are in who live under such a mixture, as hee termes "una ben constituita aristodemocratica monarchia." The passage is to long to bee here transcribed; I shall refer the reader to his booke in print.

30. Before him, Philip de Comines made very honorable mention of the government in England. In one place hee shewes the king could enterprise no great action, nor rayse ayd, without his parlyament; which, hee sayes,[a] "chose juste et saincte;" and else where, that in

[a] Lib iv. cap. 1, ed. Dionis. s. p. 112

his opinion,[a] "entre toutes les Seigneuries du monde d'ont j'ay cognoissance ou la chose publique est mieux traittée, et ou il y a moins de violence sur le peuple, et ou il y a moins d'edifices abbatus ny desmolis pour guerre, c'est Angleterre." From which wee may gather these strangers did not look upon the fabricke of this commonwealth as other then of a limited or mixed monarchy; of which more in the next chapter.

Out of what respects the King of England is called a Monarch.

CAP. 2.

1. THAT this kingdome is called a monarchy is playne to any hath read our ould historians and lawes.[b] The Conqueror himselfe termes it so, and divers of good esteeme, both before and after him; yet it is certayne till of late all writers what ever have writ, held hee was to be guided by his lawes and his politique capacity, that is, his royaltie, framed by the policy of man,[c] expressed in the severall customes, lawes, and constitutions of the kingdome, hee was to rule his subjects according to their direction and no otherwise, and that it neither was a disobeying of him when they were observed, (all men beeing, by St. Augustine's[d] rule, to obey the command of the higher, and the English have ever said the king to bee "sub Deo et Lege,[e]") nor had hee any power of punishing but according to the line and measure of the law in his ordinary courts of justice.[f]

2. I have shewed in the former chapter, 11, 16, wise antiquity did conceive of lawes as what were found for the moderating the exor-

[a] Lib. v. cap. 18, p. 190.

[b] Ethelwerdus, lib. iv. cap. 4, fol. 482, a. 33; Leg. Ed. Conf. p. 148; Leg. W[i]. I. cap. 59, p. 171; Dialog. de Scach. MSS. in libro Rubeo, lib. i. cap. 3.

[c] Cook, lib. vii. fol. 10 a, b.

[d] Tom. x. Serm. 6, De verbis D'ni super Rom. xiii. ver. 6, et caus. xi. p. 3, cap. 97.

[e] Bracton, lib. i. cap. 8, fol. 5, h. n. 5; Fleta, lib. i. cap. 17.

[f] Cook, Inst. ii. pag. 186.

bytancies greatnesse aptly falls into; but this latter age hath produced some of opinion no kings can be limited, and the cheifest reason I have heard is, because hee is a monarch, soveraigne and supream in his kingdome; words wee finde attributed to all, at least to the kings of England. It will not therefore bee amisse to take some consideration of them, they beeing indeede ambiguous termes of many significations, and communicated as well to others as princes. Monarch, after the originall derivation of the word, signifies one doth alone governe, yet is taken for him hath only the cheifest part in the rule. The French king is without peradventure a monarch, yet there are many Frenchmen will deny his monarchy so absolute, the princes of his blood ought and may at his will bee excluded from all sheare in those counsells concerne the welfare of the publique. In the first and best times, that Bishops were not soe the sole and absolute governors in the Church as they did exclude all others from any part, is cleere by many epistles of St. Cyprian, and others; yet Pope Hilary, 462, writes to Leontius, a French bishop,[a] "in provincia quæ ad monarchiam tuam pertinent."

3. The like wee may observe of the word soveraigne. In the Rolls of Parliament, 20 Ric. II. n. 25, the king, on the petition of the Friers Mendicants, by advise of the Lords Spirituall and Temporall, did ordeyne, "que nul des freres de l'ordre mendicantz passe la meere sanz conge de son soveraign de son ordre en cest royalme." Soe about the 20 of Hen. VI. I find it the attribute of a person of no greater esteeme then an abbot of parliament. The rector of Trinity in Colchester, having certayne horse stolen from him, which were after seized by the officers of the abbot of St. Edmondsbury, in Suffolk, and sold againe to the said rector for 30*s.*, he was questioned for them by the king's escheator, on pretence the abbot had not, in the mannor of Harlowbery, where they were taken, the graunt of catalla felonum, who thereupon addresst his letter to the abbot thus: "Right reverent Soveraigne and Lord, I recommend me to

[a] Baron. x. 6, ann. 462, n. 5.

your Lordship,"[a] etc. 9 Ric. 2. cap. 4, "at the will of his abbot or soveraigne." 26 H. 8. cap. 3. "their masters and soveraigne of the monasteries," etc.

4. For the tytle "supream," though it bee a word of many significations, yet it is not to bee denyed the majesty of a king, either as first cheife or in any other honourable sence in which it can bee attrybuted unto him; for certainly hee is supream in his kingdome, or else hee is no king, "qui rex est regem maxime non habeat."[b]

5. By this it is manifest these wordes are used otherwise then perhaps their genuine first derivation did import, and that to conclude any certayne forme of government from the vulgar speech and application of them to a peculier person in any state, may leade us into error, that beeing to bee gathered from ould authentique histories, chronicles, records, lawes, and monuments of the kingdome; for it is most trwe that if the words "monarch" or "soveraigne" bee taken in that sense, some now would have them of beeing so absolute as hee is tyed to no law whatsoever. There is then, as Bodin[c] rightly noteth, no soveraigne upon earth, all kings beeing subject to the lawes of God, nature, etc. and the severall constitutions of the kingdom; as the French of the Salique law, the English that wee call the law of the land, or the common law, the which are annexed and united to the crowns of England and France, as conditions with which they are received.

6. From hence I conceive it will not bee difficult to answeare a learned treatis[d] I have met with, who from the original signification of μοναρχης, importing, in Greek, one doth governe alone, would prove every monarch illimited. Words are to be understoode according to the common acception; as "Mens legis potius inspicienda est quam verba," so in words the common manner of taking them is rather to bee layed hold on then their etymology, or originall acception. He that should now use "tyrannus" for a just prince, "hostis"

[a] Lib. Sti. Edmund, in Bibliotheca D. Hen. Spelman.
[b] Martial, lib. ii. ep. 18.
[c] De Repub. lib. i. cap. 9, p. 198, p. 204.
[d] The Anarchy of a limited or mixed Monarchy, edit. 16.

for a stranger, "latro" for a souldier, would bee hardly understoode, and yet none can deny but they have beene so taken.

7. And this may satisfy that which hee writes, page 7, that a supream limited power is a contradiction. Calapine, if I forget not, hath at least ten differing waies of taking the word "supremus," from neither of which can I draw the conclusion hee would make, that if a king be supream hee must bee without limitation; and where hee sayes, page 2, that never any nation or people were governed by a limited or mixed monarchy, and inferrs there is no auctor, auntient or moderne, can bee produced for it, there beeing nothinge in Scripture or Aristotle to prove ether the limitation or mixture of a monarchy, I must (if hee mean by a monarch a king) confesse my ignorance, who cannot think at this day but all the christian princes in Europe are more or lesse limited and mixed. Of the German emperor I have spoken before:[a] of the French there is no question but it is both limited according to the Salique law, and that in the government there is a mixture both of the king and princes of the blood; and yet the monarch there hath beene ever esteemed more absolute then the English, as is manifest in that when Edward the Third did take upon him the armes and title of France, the lords and commons intreated him to declare they should not bee bound to obey him as king of France,[b] nor the realme of England subject to him as king of France; which jealousy they were againe subject unto in Hen. the 5ths tyme, and had the same provision then renewed.

8. For Spayne, Mariana, in his book De Rege, approved by the Jesuites, examined by the king's command, and allowed upon it as a peece of great worth, disputing whether "respublica universa, aut qui ejus partes gerunt, viri primarii," have the greater auctority, sayth, "Experimento comprobatur in Hispania vectigalia imperare regem non posse, populo dissentiente," etc. and a litle after hee shewes their auncestors, beeing wise men, did establish this moderation, "ut reges

[a] Cap. i. n. 14. [b] Stat. imp'ss. 14 Ed. III. et Rot. Parl. 8 Hen. V. et. 15.

intra modestiæ fines continerent." The whole passage is too long to be heere transcribed, the booke it selfe beinge every where. Truly if this and what else he hath there of that monarchy doe not shew a mixture or limitation of it, I doe not understand what is.

9. Concerning the Scripture, if he acknowledge the Jewes to have beene monarchically governed, I should desire to know if the prohibiting the kings there the thrusting out of the people from their inheritance by oppression, Ezechiel, xlvi. 18; the prophesing against them under the parable of shephards for feeding themselves and not the flock, Ezech. xxxiv. 2, 3, to the ende of the chapter; the commanding him not to multiply horses, nor greatly silver and gold,[a] that his heart bee not lifted up above his brethren,—bee not restrictions of royall power, where we shall find any prince upon earth limited; and will hold it no small favour to have him shew mee what hee conceives is a limiting of one. Josephus,[b] a Jew, paraphrasing upon Deut. xvii. 14, etc. saith the king was to undertake nothing without the advise of the priest and auntients, that [is] the Synedrion. How can this then bee other then a mixed monarchy under which they lived? But what power the kings there had, I leave him to disput with Schickardus; I will only add[c] there are severall places of Scripture, as Jer. xxvi. 16; xxxviii. 5; 1 Chr. xiii. 2; 1 K. xii. 4, 7; xvi. 24, and others, have perswaded learned men, the Jewes, however they called for a king, yet reserved to themselves sufficient auctority to overrule him in maters of consequence.

10. Touching Aristotle's opinion of limitinge kings by law, he is so firme for it as he not only treats of the Laconique rulers as kings (which were so strangly tyed by the Ephori, as many doe not esteeme them at all to have beene such), but shewes one difference betweene a king and a tyran to bee, hee rules κατὰ νόμον, the other not so; and there he shewes the Europeans (which Bodin[d] and Cardinall Benti-

[a] Deut. xvii. 16, 17, 20.
[b] De Bello Judalii, lib. iv. cap. 8.
[c] Bylson, of Obedience, at Oxford, 1585, p. 514.
[d] De Repub. lib. i. cap. 9, p. 207.

voglio[a] observes of the Northerne people) doe lesse endure a servile subjection to kings then the Asiatiques. Now I would bee glad to know of that auctor, whether any in Asia can bee more free then to bee limited by no law, or any European subject more servile then to live under a prince alowes no law his bounds? Aristotle, cap. 15, disputing how a king may bee limited, that is, μηδὲν πράττων κατὰ τὴν αὐτου βούλησιν παρὰ τον νόμον, (a doer of nothing by his owen will without the law), sayes such an one must have a power to defend the law, yet such ὥστε ἑκάστου καὶ ενος καὶ συμπλειόνων κρέιττω, τοῦ δε πλήθους ἥττω, that is, as may bee more then one or many, but lesse then the whole people. Whether this will agree with such a royalty as hee fancies, I leave him to decide the difference with Aristotle, who yet more plaine, cap. 16, treating of one doth all things, κατὰ τὴν αὐτου βούλησιν, (according to his owne will,) sayes, "Ο μὲν κατὰ νομὸν λεγόμενος βασιλεῦς οὐκ ἔστιν ἴδος κάθαπερ ἔιπομεν πολιτέιας, hee that is a king according to law, is not a distinct species of policy (or royalty, as some copies have it) from the other; meaning, the absolute and the regulated by law are both comprehended under the notion of kings, which this auctor, page 29, translates that the legall royallty is no sort of government or kingdome at all. But this by the way; I passe now to that I have in hand.

11. Having spoke of the phraces attributed to our kings, it followes that I shew in what sense they have had the denomination of monarch attributed unto them. Pandulphus Prateius[b] defines it to bee "principatus unius administrantis rempublicam ad utilitatem communem." Certainly, according to this definition, the kings of England might well be termed so. First. All administration of justice was derived from him, in so much as, hee dying, all courts of justice were determined, even the Parliament it selfe, as is playne by Rot. Parl. 1 H. 5, n. and King James, 1625.

2. All persons sweare allegiance to him.

3. He alone gives protection.[c]

[a] Bentivoglio, Relat. de Fiandra, lib. iii. cap. 7, p. 121.

[b] Lexicon Juris Civil. et Canon. verbo "Monarchia."

[c] Cook, lib. 7, Calvin's case.

4. All the land in England is held mediately or immediately of him. Not that the kings were ever at any tyme posest of the kingdome, and then disposed it to such as they liked, but every one did submit willingly that obedience and acknowledgment of duty unto him from whom they receive protection.

5. All honor is conferd by him only, and at his pleasure, and in this the kings of England have beene so absolute, as Hen. the 6. bestowing the Earldome of Richmond upon his halfe brother,[a] did graunt him precedency before all other Earles; and to Henry Beuchampe hee conferd the title of Warwick, and that he should write himselfe "Henricus præcomes totius Angliæ et comes Warwici;" and after making the same man Duke of Warwick, did ordaine "ut haberet sedem, in parliamentis et alibi, proximum Duci Norf. et ante Ducem Buckingamiæ." But this power King Hen. the 8, upon many weighty considerations, was pleased to limit himselfe in it by the stat. 31 H. 8, cap. 10.

6. He called all parliaments when and whither hee would. It is true he was by severall lawes obliged to the holding one once a yeare, but when and where that should bee, he had no tye at all.

7. He alone did coyne mony, unlesse some by grant from the crowne claym that priviledge.

8. According to Bryan,[a] 19 Ed. 4, the makinge war, and so likewise of peace, is wholy and absolutly a regall prerogative.

9. The king, without any dependance on any person whatsoever, holds his crowne immediately from God.

In respect of these high prerogatives, and divers others not by me perhaps observed, the kings with us have ever beene in my opinion justly named monarchs. It might bee heere not unfitting to consider in what sence they were never esteemed absolute monarchs; but because the disquisition of some things doe aptly precede, I shall deferr it to the eight chapter.

[a] Cook, Inst. iv. p. 361, et Camden, Brit.

[b] Cook, Inst. iv. p. 152, 19 Ed. IV. fol. 6 b.

Of the Kings of England, their tytle by Conquest.

CAP. III.

1. Doctor Ferne,[a] in a late treatis, uses as an argument to prove the kings of this nation can have no power from the people, that the crowne not only descends by inheritance, but hath beene setteled by conquest in the liones of Saxons, Danes, and Normans; indeede, the title of inheritance may seeme to have much relation to that of conquest, for it is not probable but he who hath conquered a kingdome will have it (if hee can possibly) for himselfe and his posterity, if it can bee effected; and if himselfe or they after him doe stand upon the title of election, or any other, it is likly they quit that of conquest; but if that bee maintained, I cannot conceive but that speech of king James[b] most true and just, that the subject cannot call any immunities hee injoyes his auntient and undoubted rights, inheritance, or liberties, but graces, permissions, or graunts from our kings, and that such wordes are very anti-monarchicall, however used in the Petition of right, and some other parliaments.

2. I have resolved heere to sett downe historically what I have met with concerning either of these, though I am confident I shall displease such as hold it altogether by descent or inheritance brought in by conquest, and not satisfie the others, who hold it a right in the people so inherent to elect their kings, that the English nor any other monarch whatsoever can have any other title to the crowne originally but from the free consent of the people.

3. It will not bee unfit, beefore I enter upon the maine question, to premise two things: 1. What I meane by conquest; for if it bee taken in the sense that the Danes or Normans (for of the Saxons there will bee no question, that beeing rather a transplantation of the

[a] Resolving of Conscience, sect. ii. p. 12; sect. iv. p. 19.

[b] His declaration why he dissolved the parliament, 1621, p. 41, p. 47, in his Letters, December 11, 16.

people into an other soyle, bringing with them their owen customes, lawes, and usages under which they lived, then otherwise,) did abolish the whole interest of those they found heere, did change the lawes, and take from the inhabitant what them listed, by noe other rules of justice then their owne will and sword, then I conceive neither of them did conquer this island. But if hee bee taken for a conqueror, who, vanquishing his enemy in the field, is after receyved by all parts on the same termes the former kings were, yet, beeinge setteled in peace, doth bring in many customes from the place hee came, as beeing more conducible to the government of the natives, and for the publique peace, and places his followers amongst those hee overcame, the people allwaies pursuing after their auntient lawes and customes, then I conceive neither the Danes nor Norman may bee called conquerors; for one parte of the lawe was questionlesse, from the Dane, called Denelage; and the Grand Coustumier of Normandy shewes many things now in use had their rise from thence.

4. The second head fitt to bee considered before I enter upon it is, because much of that I shall say will bee taken out of the histories of this kingdom, and may have some reference to the lawes of it, which Sir Ed. Cooke[a] advises all men to beware of when delivered by hystorians, which hee calls "ementita jurisprudentia," it will bee necessary to make some apology for hystoricall law.

5. The truth is, the law delivered by an historian is much differing from that comes from a lawyer, as declaring not only the fact, but the policy, reason, and matter of state in it, where the other resolves onely how it stood with the law, and upon what poynt in that it was adjudged; it is not to bee denyed they have much conformity in things, yet in some they differ. Neither is there any man receives ought from an hystorian, otherwise then as it agrees with good auctority either of those lived at the tyme (or rather neere it), and have soe write as there is to bee seene "ductus veri" in their penn,

[a] Epist. lib. iii.

and have been ever reputed sober, entire, and that well understoode what they spake of, as delivering nothing is not conformable to other monuments of the kingdom. There is no question error is that accompanies humane frailty, and what as well lawyers as others are subject unto; and Sir Ed. Cooke, instancing in some failings of Polidor Virgill, "Hominis Itali, et in rebus nostris hospitis, in Republica minime versati, nec magni vel judicii vel ingenii," as S^r Henry Saville [a] observes, ought not make him condemne all have writ of what past in their tymes, as if they either understood not what they said, or spake of purpose to deceive.

6. I doe blame Polidore Virgil affirming Henry the 3. did, about the 39th yeare of his reigne, cause his eldest sonne Edward to bee created princeps Walliæ; [b] adding, further, "unde natum ut deinceps unusquisque rex, hoc secutus institutum, filium majorem natu Walliæ principem facere consueverit," when certainly Edward the 2. was the first of the English race that was created and received Prince of Wales; [c] but as I mislike this in an historian, so I doe not commend it in Mr. Plowden,[d] a grave and singuler learned lawyer, who in this agrees with him. I did never read that case in him, but I did think escuage beegun to bee taken first about Hen. the Third's tyme, yet it is cleere by the red booke of the Exchequer it was assest 2 Hen. 2.[e]

7. Neither can I conceive the elder historians so to bee slighted, when they speake of law, as writing that they were wholy ignorant of. Most of our histories were compiled by religious persons, the onely schollers of those tymes, who not alone held the great offices of the realme as judges, chancelors, treasurers, etc. as himselfe affirmeth,[f] but other inferior, such as Richardus Nigellus, or Fitzneal, whom I take to have beene the auctor of the Dialogue of the Exchequer,

[a] Epist. Reginæ, præfixa ante Scriptores Angl.
[b] 1255. Pol. Virgil, Hist. Ang. lib. xvi. pag. 311, lin. 20, 21.
[c] Vide Hist. Wal. p. 376, et p. 309.
[d] Com. Bulckley's Case, fol. 126 b.
[e] Lib. Rubrus, fol. 47 b.
[f] Inst. ii. p. 98.

attributed to Gervasius Tilburiensis, but whosoever it was, it is certayne to have beene composed by an ecclesiastique, and one of great experience in that court, bee it by which you will of them; so likwise was Alexander archdeacon of Shrewsbery, a diligent officer there in king John and Hen. the Third's reignes, whose sirname seemes to have beene Suereford, an assistant to Math. Paris[a] in his collections; and other which I omit; and no marvell, for in those dayes Mal[m]sbury[b] observes there was "nullus clericus nisi causidicus," which the many prohibitions made against such of the clergie as studied "leges mundanas," doth enough prove they were not a little then addicted unto, as the councell held at Tours 1163,[c] commanded by Honorius 3.[d] to bee put in execution 1219, in these partes, by the Archbishop of Canterbury and his suffraganes, with this addition, that wheras that councell reached none goeing out of their houses to heare the lawes read, if they returned within two moneths, this bill did excommunicate them "ipso facto;" which yet did not produce the reformation expected, for Inocentius 4[tus] was againe constreyned to renew it 1254;[e] so that it is probable when they writ of any legall matter, they spake of that they were not alltogether ignorant of, and especially Hovenden, who is held to have beene a lawyer.

8. And that the testimony of history is good evidence for proofe of those things I am to speake, I shall onely remember that the 16th day of October, 39 Hen. 6, the duke of York puting in his clayme to the crowne, and his counsell pressing for answeare, the lords thought fitt to acquaint the king with it, who comanded all the lords to search what might bee objected against the said clayme, who likewise beesought his highnesse that hee would beethink himselfe, "in as much as his said highnesse had seene and understood divers writings and

[a] Hist. Minor. anno 1216. [b] Fol. 69 b. in W[mo]. 2[do].

[c] Guliel. Neubrigen. lib. ii. cap. 15, et Baron. to. xii. p. 18.

[d] Bulla dat. Viterbi, 10 kal. Novem. 4, Pontificat. Hon. III.

[e] Mat. Paris, p. 883, 22. edit. 1640; et pag. 1177, 23. edit. 1570; et Additament. p. 190, 45. Vide Pet. Blesen. epist. 26, 84, 140.

chronicles," and the statute 24 H. 8, cap. 12, calls for no other witnesse but "divers sundry ould authentique historyes and chronicles," to prove the manner of the government of England; and indeede, when the right of ought depends on fact, I cannot see how there can bee better testimony then from them who in their lives sawe the manner of it, and left it behind them to informe posterity after their deaths with that wee call history, without which it will bee hard to understand many records of this kingdome, as himselfe doth acknowledg;[a] and, for my part, I am confident hee doth find fault with what they deliver, not so much out of the errors hee finds in them (which are perhaps no greater then may bee in others in their owen science, to fayle beeing that humane nature is subject unto, and the wise reader examines the truth of that hee meets with), but meerely as himselfe elcewhere affirms,[b] because hee cannot alow matter of law to proceede from men not of that profession, so unwilling are wee to have any meddle, and get credit by that our selves excell in.

9. Having made this short apology, not out of any desire to contradict that honorable gentleman, to whose labours this kingdome owes so much, as hee is not unfitly called by one "juris nostri Tribonianus," [c] but onelye out of two respects: 1. to shew how easy it is to except against an other's writings; 2. to defend them (whose memory for their industry and learning is ever deere unto me) that have with care transmitted to us what formerly past;—I shall now addresse my selfe to the matter: and first touching the Saxons;

10. Who transplantinge themselves hither, expelling the natives into Cor[n]well and Wales (excepting some few they might permit to live amongst them), must bee thought to have reteyned the usages they had in Germany; and indeed, as the affinitie yet in language beetweene some of the Welsh and those in Brittannia Armorica doe prove the one to have descended from the other, so mee thinks wee see many darke draughts of the ould German manners with us yett

[a] Inst. iv. p. 52. [b] Lib. v. fol. 104 a, Baker's Case.
[c] Spel. Glossar. inter Capitales Justitiarios, p. 417 a.

remaininge; as that rejecting "Fremitu," of which Tacitus [a] speaks, is not so unlike the refusall by noes to this day used in the House of Commons; and the approbation "concutiendo Frameas" [a] seemes to mee so to resemble the reception of new governors mentioned in the lawes of the Confessor,[b] where "ipse erecta lancea sua ab omnibus foedus accipiebat," and they "omnes quotquot venissent cum lanceis suis ipsius hastam tangebant, et ita se confirmabant per contactum armorum, etc." as for my part I cannot but hold the German usage to have beene the ground of either. Wee must therefore enquire how that nation comported themselves towards their kings.

11. Tacitus [c] observes, amongst them kings were assumed "ex nobilitate, duces ex virtute;" by which, as it is plaine their kings were ex nobilitate, of the best ranke, yet they were not so by a lineall inheritance that it alone confered on them the crowne, without all approving by the people; and that it past so with us there needes no greater proofe, then that during the Saxon Heptarchy there is scarse three together in a lineall descent, father, sonne, and grandchild; sometyme the brother of the late deceased, (leaving two sonns which both reigned afterwards,) styled and taken for the next heyre,[d] and of those kings who were "potentissimi,"[e] said to bee by Beda "reges gentis Anglorum" (of which sort hee reckons 7), not one lineally succeeding to the other; yea, what is more strange, the kingdome of the West Saxons, the most considerable, some tymes conferd by the last king [f] upon his wife, as it were a legacy. And though the councell held at Calcuyth about 787 expressely provided kings should bee chossen "a sacerdotibus et senioribus populi," [g] declaring "Christus Domini esse non valet et rex totius regni et hæres patriæ qui ex legitimo non fuerit concubio generatus," yet Mal[m]sbury [h]

[a] De Morib. Germanor. p. 693.
[b] Cap. 32, de Hundred. et Wapentachiis, p. 693.
[c] De Morib. Germanor. pag. 690. [d] Flor. Wigor. anno 946, 955, 959, et pag. 580.
[e] Beda. lib. i. cap. 25; lib. ii. cap. 5.
[f] Vide Mal[m]s. lib. i. cap. 2, fol. 6, b. 23, anno 674.
[g] Concil. Spelman, p. 296, cap. 12. [h] De Reg. lib. ii. cap. 6, fol. 26, b. 29, a. 18.

records in the yeare 924, Ethelstan was "magno consensu optimatum electus," though some opposed "quod ex concubina natus esset."

12. Indeede it can not bee denied, but as in Germany they were "ex nobilitate," so heere "de regali prosapia,"[a] yet so as Mal[m]sbury,[b] in Ina and Brithicus, remembers they often "non parum a linea regiæ stirpis exorbitaverant;" of which there can bee no reason but that with proximity of blood the assent "sacerdotum et seniorum populi"[c] did concur in placing princes in their throne. And surely the many examples remaining in history where in they are said to bee "electi," are very pregnant testimonyes the princes of those times did not esteeme themselves absolutely kings, how lineally soever their tytle might bee, till the people did at their coronation or some way else testifie their assent unto it; so that as well princes had an investiture (as I may call it) in to their principalities as private officers "in præfecturas,"[d] of which I shall onely shew heere some few examples during the tymes of the Danes and Saxons, beecause it doth in my judgment much take away the tytle of conquest.

13. The Register of St. Alban's, out of which Mathew Paris collected the lives of the two Offas, one of which was the founder of that howse,[e] remembers how the "potentes" of Mercia did place the crowne upon one of them; and himselfe, a little after,[f] exhorts them to adhere unto him whom they had called to defend their liberties, "Non meis meritis sed sola liberalitate vestra."

The Councell of Calcuith, anno 787, or thereabouts, did not only establish rules for the election of kings,[g] but in that councell Offa caused Egfrid his sonne to bee crowned and joyned with him in the kingdome.[h]

14. Anno 901, Ethelwerdus[i] sayes, Edward, the sonn of Alfred,

[a] Asserius, anno 867.
[b] Lib. i. cap. 2, de Reg. fol. 7, a. 7, f. 8, a. 17.
[c] Concil. Calcuth. cap. xii. p. 296.
[d] Vide Leg. Ed. cap. xxxii. p. 145.
[e] Vita Offæ, p. 12, 20, anno 758.
[f] Fol. 14, 1.
[g] Can. xii. Concil. Spelman, p. [296].
[h] Mat. Paris, in Vita Offæ, p. 26, 1; et M. West. anno 789, p. 281, 1.
[i] Lib. iv. cap. 4, fol. 482, a. 33.

was "a primatis electus;" and Mal[m]sbury,[a] that 924, Ethelstane was, by a full consent of the nobility, "electus."

Anno 957,[b] Florentius Wigorniensis remembers the Mercians rejected Edwine, and made choyse of his brother Edgar; who 959, after his brother's death, was elected king, "ab omni Anglorum populo." Neither doth this election here mentioned seeme the ceremony yet reteined at the inthronization of princes, for hee was not crowned till 15 yeares after, as both the same auctor[c] and Mal[m]sbury agree.

15. After his death, 975, there grewe a great contention,[d] "de rege eligendo," some (according to the father's appointment) standing for Edward, an elder brother, by a former wife, to Ethelred, whom they endeavored to prefer; but, the cleargy and nobility joyning, this was put by, and hee, by his mother-in-lawe, 978, made away. After which, the nobility called together, matris suffragio, Ethelred "ad regni fastigium est consecratus;" but his tymes were full of trouble, for hee by a stratagem destroying in one day all the Danes through the kingdom, which seemes to have beene by turning the armes of the English[e] (who were to appeere armed by an ould lawe in one day thorow the realme) to the destruction of them beeing naked, there grewe great wars betweene Swane of Denmark and him;[f] insomuch as, 1013, he, to avoyd all danger, sent his children into Normandy, and at the beegining of the next yeare followed himselfe, in which, likewise, Swane dyed.

16. Upon whose death,[g] "majores natu totius Angliæ" sent unto him, professing they neither did nor would love any more then him their naturall lord, "Si ipse vel rectius gubernare, vel mitius eos tractare vellet quam prius tractârat," whereupon hee sent them his sone Edward, with promises, "se illis mitem devotumque dominum futurum, in omnibus eorum voluntati consensurum, consiliis acquie-

[a] Fol. 26, b. 16, 19; fol. 29, a. 19.
[b] P. 354 et p. 355.
[c] An°. 973. Mal[m]s. de Reg. lib. ii. cap. 8, fol. 33, b. 10.
[d] Flor. Wig. p. 361; Mal[m]s. fol. 33, b. 44.
[e] Leg. Ed. cap. xxxv. p. 147.
[f] Flor. Wig. p. 381.
[g] P. 381.

turum," and would pardon what was past, "si omnes unanimiter et sine perfidia illum recipere vellent in regnum." Upon which "plenaria amicitia verbis et pactis confirmatur," they promising never to receive any Dane for their king, Etheldred, in Lent, is brought out of Normandy, and received with much honor; but Canutus, the sonne of Swane, making hot warrs upon him, death, 1016, puts a period to his long and troublesome raigne.

17. After which, "Episcopi, abbates, duces, et qui nobiliores Angliæ, in unum congregati, pari consensu in dominum et regem sibi Canutum elegêre;" but the Londoners and the West [a] "in regem levavêre" Edmund,[b] for his valor called Ironside, who was sonne of Etheldred, but not by his queene Emma (whom his father seemes to have marryed towards his ende), for shee had children after him by Canutus,[c] "sed ex quadam alia quam fama obscura recondit." This Edmund fought against the Danes with good successe; but in the ende, fayling in one battaile, and preparing for a second encounter, is perswaded to make a peace with Canutus, and divide the kingdome with him; after which, in the same yeare, about St. Andrew's, he dies.

18. Then Canutus [d] calls the bishops and nobility to him at London, and there receives a promis from them to elect him their king; and so, as the same auctor shewes, 1017, "Rex Canutus totius Angliæ suscepit imperium;" or, as Ingulphus speaks, "Omnium consensu super totam Angliam coronatus est:" hee making then a stipulation or an agreement,[e] as well with the Englishe as they with him, and graunting them "æquum jus cum Danis suis in consessu, in consilio, in prælio." [f] And, indeede, I doe not know whether ever any stranger did indeavor more to win the natives unto him then this prince, or did more to shewe he did not come in by the tytle of conquest then he did, who was the first of the Danish race.

[a] Flor. Wigorn. p. [389]. [b] Ingulfus, fol. 507, b. 6. [c] Mal[m]s. fol. 40, a. 7.
[d] Flor. Wigorn. p. 389. [e] Flor. Wigorn. p. 390.
[f] Mal[m]s. fol. 41, 31. Ingulph. fol. 507, b. 37.

19. This Canutus had two wives, Elfgina, Elgiva, or Alfgiva,[a] a lady of Northampton, by whom he had Swane (but her I never find called his queene, nor any mention of their mariage; so that shee seemes to me rather his concubine then his wife), to whom he left Norway, and Harold. He had likewise Emma, the Duke of Normandies daughter, and widdow of Etheldred, whom he married 1017, and had by her Hardicanute and Gunilda,[b] who was the wife of Henry, made Emperor of Rome 1039,[c] as Flor. Wigor. remembers; so that Hardicanute was, by the mother, brother to Alfred, miserably destroyed by Godwin, 1036;[d] and Edward, afterwards king, and knowne by the name of the Confessor.

20. Anno 1035, Canutus, or Cnute, dies, leaving a contention betweene Harold, by some thought a suppositious child,[e] and Hardicanute,[f] whom hee had seated in Denmark, who should bee king of England. The Danes and Londoners make choice of Harold, but the rest of the kingdome desire rather Edward, the sonne of Ethelred, or Hardicanute, his halfe brother, by Emma, whose party, though hee at his father's death were not in England, grwe so strong, the kingdome was divided beetweene them; London and the north of Thames falling to Harold's share, the southern parts to Hardicanute, who upon this division retires into Danemarke, but staying there longer than was seasonable, and delaying his returne back, is here, by his owne party, 1037, alltogether rejected, and Harold "a principibus et omni populo rex eligitur."

21. Whose death insuing, 1040, the children of Ethelred neglected "magis propter paternæ socordiæ memoriam quam propter Danorum potentiam,"[g] both Danes and Englishe agree to send to Bridges for Hardicanute, desiring him to come and take the kingdome, which

[a] Ingul. fol. 509, 3; Flor. Wigor. an[is]. 1017, 1035; et Simeon Dunel. ibid. Mal[m]s. lib. ii. cap. 12, fol. 42, b. 48.

[b] Sim. Dunel. col. 177, 3. [c] Hen. III. [d] Flor. Wig. et Simeon Dunelm.

[e] Flor. Wigor. p. 398. Ingul. fol. 509, a. 3, etc.

[f] Sim. Dunelm. col. 1, 179, 4. [g] Mal[m]s. fol. 43, a. 12.

he did the same summer, and shewed much offence to them had beene cause of his brother Alfred's death,[a] and likewise against Harold, but gave honorable entertainment to his brother Edward, the sonn of Etheldred, who came to him 1041, out of Normandy. So little jealousy bread then the tytle of an elder brother to one placed in the throne.

22. Anno 1042, Hardicanut, the last of the Danish, dyed, so that all the tyme they had dominion here was about 26 yeares; for after his death, Godwine, the powerfull lay man of those times, and Living, bishop of Worcester, of the clergy, promoting the choice,[b] "omnium electione in Eadwardum concordatur." Who this Godwine was, though then a person of great esteeme, our historians for the most parte are silent; onely Radulphus Niger, or Cogeshall[c] (for I take them to bee both but one writer), sayes, "Godwinus comes filius bubulci fuit; hic Godwinus a rege Cnutone nutritus, processu temporis in Daciam cum rege transmissus, callide duxit sororem Cnutonis;" but by her he had not Harold, which renders it the more strange how Huntington[d] should write he possest himselfe of the crowne, "viribus et genere fretus."

23. Ingulphus[e] and the Norman writers affirme, Edward the Confessor did, by Robert Archbishop of Canterbury, assure his cozen William Duke of Normandy he designed him king after his death, and that he sent Harald to confirme this unto him,[f] who gave him assurance by oath that he would, after Edward's death, conserve this crowne for the Duke, and would himselfe mary his daughter; yet, notwithstanding, he did thrust himselfe into the throne, not expecting "quid electio publica statueret."[g]

[a] Flor. Wigor. Ingul. [b] Ingul. fol. 509, a. 33.

[c] In Bibliotheca com. Arundelian. fol. 38, a. col. 1, MSS. Vide Ma[lm]sbur. fol. 46, a. 46; fol. 45, a. 24.

[d] Hunt. fol. 210, b. 16. [e] Fol. 511, b. 40. Gemet. lib. vii. cap. 31.

[f] Ingul. ib. fol. 511, b. 44, 55.

[g] Pictaviensis, p. 196, d. Ordericus Vitalis, p. 492.

24. The English, on the other side, say,[a] if there were any such designation, it was whilst Edward was a sojourner in Normandy; that before his death, 1066, he did appoynt Harold to succede, who [was] "a totius Angliæ primoribus ad regale culmen electus." However both sides agree he was or should not have beene king "sine communi consensu præsulum et comitum procerumque," etc. which enough proves that custome Tacitus observes of the Germanes, to have beene heere likwise practist during the tymes of the Saxons; for if wee find the use to have beene that most of their kings were taken not without election, it cannot bee concluded, if it bee not remembered at the assuming of some one of them, it was therefore omitted.

That the Saxon Kings heere had not an absolute but only a lymited power.

CAP. 4.

1. HAVING shewne how the Saxons here did follow their owne manner in making a king, another thing Tacitus notes of them is, that in Germany kings had not "infinitam aut liberam potestatem,"[b] and that in their publique councells they were indued "auctoritate suadendi magis quam jubendi potestate."[c] How that was heere practisd is to bee examined; of which, though the monuments of those tymes are so decayed as there is little left to give us light therein but what is found in the register of churches, or kept in monasteries, of which a very considerable part is undoubtedly lost, yet by what doth remayn wee may conclude they did as well imitate them in this latter as the former, of which I only shall give some few tastes.

2. Anno 787, Brithricus,[d] or Beortrick, king of the West Saxons,

[a] Eadmer, p. 5, 19, 36. Flor. Wigor.
[b] [Mor. Germ. cap. vii.]
[c] [Mor. Germ. cap. xi.]
[d] Vide Flor. Wigor. annis 787, 800, 855.

marryed Eadburgh daughter of Offa the Mercian, who carryed her selfe so as shee became very odious to his subjects; and anno 800,[a] about 13 yeares after her marriage, havinge prepared poyson for one her husband favor'd, he tooke part himselfe, so as both dyed, which fact was so abominated as all the inhabitants of West Saxony did unanimously joyne never to admit any king would so much as suffer his wife to sit on the royall seat, or have the name of queene. This was a hard law put on soveraignty, and which my auctor calls "detestabilis," and "perversa consuetudo," and which Ethelulf, a prince much beloved, having in his returne from Rome marryed the daughter of Carolus Calvus in France, found meanes, without opposition, to take away, but still shewes a strang power in a people (who had with good content about 126 yeares before permitted a queene to govern them,) to have no king but on their owne termes, and to impose on him what conditions they liked.

3. Ethelstane,[b] in the preface to his Lawes, calls them their Lawes, "cum ea ego vobis lege vestra omnia benigne largitus sim," etc. which proves certainly the people did in those dayes concur in making of them with the monarch.

Harold, the last of the Saxon line, is said to have ansewrd the Conqueror, urging him to marry his daughter, according to a former promisse, "Super regnum Angliæ mulierem extraneam inconsultis principibus me nec debere, nec sine grandi injuria posse, adducere noverit;"[c] indeede Ordericus Vitalis[d] doth note the West and North Angliæ "regi nisi ad libitum suum famulari, sub rege Edwardo aliisque prioribus olim despexerat."

4. And certaynly he might have said as much for the East; for it is recorded that Baldredus king of Kent, about 805, haveing given a [manor][e] in Southsex, called Malling, to the church of Canterbury, "quia ille rex cunctis principibus non placuit, noluerunt donum ejus permanere ratum;" whereupon it was after confirmed, 838, in a coun-

[a] Asserus Meneven. anno 855. [b] Leg. Sax. [c] Eadmer, p. 5, 54.
[d] Lib. iv. p. 509, d. [e] Concil. Spel. pag 340, et Lib. MSS.

cell held at Cyningestune,[a] in Surrey, "et pro ampliore confirmatione iterum adducta coram Æthelwlfo rege et optimatibus in villa regali quæ appellatur Wiltun;" and there againe ratyfyed by the king's and others subscriptions, whose names stand yet in an ould booke I have seene; and from hince, no doubt, proceeded that in the auntient graunts of princes so many joyned with them in subscribing the instrument, not as witnesses only, but as partly confirmers of the act. So Withredus, king, mentions a priviledg graunted the clergy, which, sayth he, "una cum consensu principum meorum, quorum nomina subter scribenda sunt, facere curavi," etc.[b]

5. But heere it may bee demanded, whither the Danes were not more absolute? who may bee thought to have come in some measure by the sword. To which is answerd, that Canutus, at his entrance, did not only "fœdus cum principibus et omni populo ipse et illi cum ipso percusserunt, et amicitiam firmam inter se juramentis stabilierunt,"[c] but never did at all claime any other power then the former kings had exercised, ney, in some pertyculers, he expressely restreyned himselfe, or at least declared that he would have lesse then had beene before taken from the subject; for whereas they had been molested by a certaine kind of purveyance, hee tooke care his owen grounds should find him,[d] and made profession he did only seeke after those things might stopp all injustice;[e] and whereas the kingdome before the Conquest was governed by three severall lawes,[f] West Sexenelage, Merchenlage, and Denelage (which, I conceive, were such usages as the Danes had introduced),[g] he sets downe what was the right of the crowne, according to each of them, without inserting any newe addition whatever.

And from Rome,[h] about 1031, he doth not onely command all

[a] Sic MSS. [b] Concil. Spel. p. 198. [c] Florent. Wigorn. anno 1017, p. 390.
[d] Leg. Canut. cap. lxvii. p. 122. [e] Leg. xi. p. 109.
[f] Leg. Wil. Primi, cap. iii. p. ; Leg. Hen. I. cap. vi. p. 180, lin. 1; cap. ix. p. 181, lin. 58; Dialogu. de Scach. lib. i. cap. de liro judiciario, 16; Leg. Ed. p. 149.
[g] Leg. Canut. cap. xii. xiii. xiv. p. 110.
[h] Ingul. fol. 508, a. 31; Flor. Wigor. anno 1031; Mal[m]sbur. fol. 42, a. 20.

those to whom in his absence hee had committed the government, to doe equall justice to rich and poore, and neither for his favor or profit to do otherwise: "Quia (sayes he) nulla mihi necessitas est ut iniqua exactione pecunia mihi congregetur;" but, as Mal[m]sbury[a] notes, he tooke such order that "nec dicto deterius fuit factum; omnes enim leges, ab antiquis regibus et maxime ab antecessore suo Ethelredo latas, sub interminatione regiæ multæ, perpetuis temporibus observari præcepit; in quarum custodia, etiam nunc tempore bonorum, sub nomine Edwardi juratur, non quod ille statuerit sed quod observaverit."

6. But where it is said hee gave such strict order for observing the lawes of Ethelred, I conceive it should bee Edgar, for those they were which the Confessor[b] renewed, were in the king's oath provided to bee kept, and on all occasions desired by the people, and made good unto them by the reiterated promises of princes.

7. And this may serve to confute that opinion of William the Conqueror's beeing the first who did by oath assure his people of governing them by law. Wee see it is expressely said both king and subject did, by swearing to each other, mutually make a solemne compact together, and establish their agreements on his taking the crowne; and though no doubt in those tymes (as well as in others before and since) some hard presure were forced on the commons, of which they complayned, yet wee may not conclude they then had no lawe, or the king not at all tyed to the observance of it,[c] for it is confessed king Edward did save his oath, in doing what he could to reduce the kingdome to the state it was in before the Danes, though he could not effect that hee desired; by which wee cannot but gather hee did take an oath for the well governing of it, and, really intending and indeavoring of it, could not bee accounted perjured, for "sufficit voluntas ubi deficit facultas."

[a] Fol. eod.

[b] Hovend. fol. 347, a. 36; Leg. Sex. p. 149, p. 159, p. 172, 1, 63; Leg. Hen. I. cap. ii. p. 176, 32. Continuat. Flor. Wigor. anno 1141, p. . Rot. Parl. 1 H. IV. n.

[c] Leg. Ed. cap. 16, p. 141. Vide etiam cap. 17, p. 142.

Of the Normans.

[CAP. V.]

1. HITHERTO I can not looke upon this nation but [as] a people that (as they of Northumberland told Harold, beeing sent against them with forces, "Se homines libere natos, libere educatos, nullius ducis ferociam pati posse, a majoribus didicisse aut libertatem aut mortem,")[a] did much prise their liberty; and who, as Mathew Paris, observes,[b] "a tempore Bruti," to the Normans, "jugum servitutis nescientes," were then "compulsi novis legibus subjacere;"[c] and indeede there can bee no collour of the tytle of conquest to bee claymed by our kings, but from them of whose lyne those that now raign are descended, of whom William the First hath ever beene stiled the conqueror; and himselfe, when hee came to dye, did confesse his coming to this crowne was not "hæreditario jure sed diro conflictu;" and a little after, beewayling his usage of the English in the North, hee addes, "fasces hujus regni quos cum tot peccatis obtinui nulli audeo tradere nisi Deo soli," etc. So that it seemes, as himselfe did clayme by the guift of St. Edward, hee did conceive a testamentary donatyon might have beene valid to have transferd his kingdome. It will be therefore necessary to consider what he made his tytle, and how his deportment was afterward.

2. For the first, when William sent to Harald beefore the fight,[e] hee claymed this crowne as due to him by the graunt of his kinsman, who appointed him his heire, by the advise of Stigand the archbishop, Godwin, Leuric,[f] and Siward, earls, which could not bee lesse then 11 years beefore his death, for Siward earle of Northumberland dyed 1055. It is trwe Mal[m]sbury[g] and Mat. Paris[h] doe hold

[a] Mal[m]s. fol. 46, b. 13. [b] Vitæ Abbat p. 46. 39.
[c] Ib. lin. 41. [d] Ordericus Vital. p. 659 b.
[e] Guliel. Pict. p. 200, a, b, c. Mal[m]sb. fol. 56, b. 46.
[f] Leofrick. [g] Fol. 56, a. 26. [h] Anno 1257, p. 1257, 40.

this invalid because made "absque generali senatus et populi conventu et edicto," yet it was such as Gulielmus Pictaviensis [a] remembers hee was ready "ad agendam causam contra illum [b] in judicio, sive placet illi juxta jus Normannorum, sive potius Anglorum. Si secundum æquitatis veritatem decreverint Normanni aut Angli, quod ille regnum hoc jure debeat possidere, cum pace possideat; si vero mihi justitiæ debito reddendum esse consenserint, mihi dimittat." And this is what he pretended before the battel.

3. After his victory, whither, as Newbrigensis [c] hath it, desiring to bee esteemed no tyran but a lawfull king, or that those who met him at Beorcham, and with whom "ipse fœdus pepigit," [d] submitted unto him on good conditions, the writers of those tymes, especially the Normans, who were most privie to his actions, doe constantly affirme [e] hee did not take the crowne but on the desire and election of the English; who, Math. Paris [f] sayth, "ipsum sponte sublimaverunt," and "sicut mos Anglici principatus exigit," [g] on the same tearmes former princes had beene received, not without giving a solemne oath beefore the people for his well usage of them; [h] and afterwards confirming unto the Kentish men their auntient rights and liberties, [i] and agreeing with them of Exeter, whom he had besieged, [k] no doubt on the like termes, for his souldiers neither entred their towne nor had the forfiture of their goods, and both conserved that old custome of gavelkind (tyll the 23 Eliz. it was by a private law in that towne altered) which yet remaynes in Kent.

4. On what termes they who came to him at Beorcham compounded with him I have not yet met with in any auntient writer. Camden sayes, they yeilded "victori Normanno multa et magna

[a] Pag. 200 c. et Mal[m]s. fol. 46, b. 46.
[b] Scil. Haraldum.
[c] Lib. i. cap. 1.
[d] Flor. Wig. an°. 1066, p. 431, et Simon. Dunelm. col.
[e] Script. Norm. p. 205; Gul. Gemet. lib. vii. cap. 37, p. 288.
[f] Vit. Abbat. Fritherici, p. 48, 47.
[g] Orderic. Vital. p. 503, b.
[h] Mal[m]s. in Vita Aldredi, fol. 154, b. 9.
[i] Gulielm. Thorn.
[k] Ordericus Vitalis, p. 510, c.

pollicenti."[a] William Roville, a French writer who put out the Grand Coustamier de Normandy, 1539, in his preface "De Origine Normannorum," beefore fol. 1. relates, from a booke called Chronica Chronicarum, that, having vanquisht Harald, "hac conditione regno libere potitus est, ut scilicet leges patriæ a præfato Edwardo latas inviolatas servaret." An old writer[b] that I have, speaking of this overthrow, relates that after it the English retired to London, "ubi convenientes episcopi et barones contulerunt de rege et regno, et demum Willielmum in regem elegerunt; qui cum esset unctus et coronatus, quesivit ab eis quibus vellent uti legibus; at illi dixerunt, legibus Eadwardi regis, et concessit eis, ut ipsis legibus uterentur," yet his lawes[c] and our historians doe not speake of any thing of this nature establisht till the 4th yeare of his raign.

5. Indeede, it is not imaginable his victory could have made him so absolut as within three monthes to receive the whole kingdome in peace, had hee not joyned a fitting moderation with it,—condemning none whome hee could justly save,[d] nor giving to any French what it was unjust to take from the English; of which there is a memorable example in the family of Sharnborne in Norfolk, whose estate the Conqueror havinge given to Warren, a Frenchman, yet sitting after himselfe in judgment, and finding it unjust in that the owner of it had never beene against him, he brake what had beene by him formerly done, as Mr. Camden and Sir Henry Spelman tell us.[e] Mr. Selden[f] doth say many such tytles as this are cleerely allowed (and to his remembrance this very perticuler) in Domesday. I confesse I doe not remember this touched in it; but for the generall it is most

[a] Britan. ubi agit de Normannis, p. 108, edit. 1607.

[b] Hist. MSS. lib. antiquus quem mihi dedit, vel saltem accommodavit, Dns. Georgius Neuman continens Histor. Galfridi Monumetensis, gesta Danorum, Normannorum et Anglorum ad pugnam apud Evesham, anno 1265, circa quod tempus codex scriptus erat, ut ex manu conjicio.

[c] Pag. 138; Hoved. fol. 343, a. 13.

[d] Pictav. p. 207 c. p. 208 c.

[e] In Norfol. p. 350, edit. 1607; Glosar. verbo Drenches.

[f] Reviewe of his 8. chapter of his History of Tithes.

true, and that record requires from many no other services but those had beene due to former princes.

6. At his second coming he gave a favorable eare to all,[a] and in the second and third yeare of his raigne, finding a generall combination of all the English (even of those who had formerly joyned with the Normans against their countrymen), "pro vendicanda pristina libertate," he did, on their petition, in his 4th yeare, not only graunt them their auntient lawes,[b] but afterward, in the presence of Lanfrank,[c] tooke againe a solemne oath for the maintaining of them. As indeed it seemes to me he at the first judged the Saxons by the Englishe lawe and the French by the Norman. Walteof[d] affirmes the law for treason the English lay under was, the offender was to loose his head, his posterity to bee deprived of all their estate, and that therefore he was carefull not to incurr that offence, for which yet hee dyed by the hand of justice. To what ende did he alleadge the English lawe if he were not to be tryed by it? But Roger de Britoil, a Norman, beeing in the same treason, "secundum leges Normannorum judicatus est" onely to loose his inheritance and lye in perpetuall prison. And that after this they did, in private differences betweene man and man, use the English law, is plaine by that memorable sute between Lanfrank and Odo, recorded in textu Roffensi, fol. 168, held at Pinendune, at which the king commanded, "omnes Francigenas et præcipue Anglos in antiquis legibus et consuetudinibus peritos in unum convenire." To what end did his majesty take so great a care the best skilld in the English lawes should meete, if hee had made a change of them? Why did hee cause "leges terræ, statutaque Anglicorum regum," to bee taught in French, as Ingulfus[e] observes, if hee did altogether abrogate those

[a] Ordericus Vitalis, lib. iv. p. 509, d. 511, b. 512.

[b] Leg. Ed. a Wil°. I°. anno 4to. Confirmatæ, cap. 35, p. 149; cap. 63, p. 172; et apud Hovenden, fol. 343, a. 13; fol. 347, a. 8.

[c] Mat. Paris, in Vita Abbatis Fretherici, p. 48, 37.

[d] Ordericus Vitalis, p. 535.

[e] Ingul. fol. 512, b. 40.

lawes? It is certaine his sonn[a] held "Westsexa, capud regni et legum, ad quam recurrendum est in omni dissidentia contingentium." Neither can it bee probable, had hee tooke upon him as an absolute conqueror, hee would have found no more opposition; or Heward, after so long resistance, not to have had more joyned with him; and when no longer able to hold out, to receive "cum regiâ pace paternam hæreditatem,"[b] but that others had tasted of the like mercy with him.

7. Upon these grounds, I am fully perswaded, however wee call William the First "the Conqueror," he neither did nor could come in by the tytle of conquest, neither can his successors clayme that right from him: ney, if hee had it himselfe, I doe not see how it possibly can bee appropriated to them by that right. It is certayne hee placed multitudes of Normans (by whose assistance hee wonne the kingdome) in severall parts of it, but he did not conquer them, for they joyned with him in the action, and about 23 Hen. 2, it could hardly be discerned who was English, who French. For, in the Dialogue of the Exchequer,[c] upon a question moved, whither the hundred were bound to pay for the murther of an Englishman[d] as it was of a Norman, it is answerd that "a prima institutione non debet; sed jam cohabitantibus Anglicis et Normannis, et alterutrum uxores ducentibus vel nubentibus, sic permixtæ sunt nationes ut vix discerni possit hodie, de liberis loquor, quis Anglicus quis Normannus sit genere; ea propter pene quicunque sic hodie occisus reperitur, ut murdrum punitur," etc. I remember our historians[e] record the Earle of Surrey in Edward the First's tyme, pulling out an ould sword, affirmed the Conqueror did not alone make the conquest of the kingdome, but his auncestors wonne their parts by that sword, with which he intended to keepe it; which certainly shewes he did not then hold the king's tytle to bee onely conquest.

[a] Leg. Hen. I. cap. 87, p. 210, 41. [b] Ingul. fol. 511, b. 20; 512, b 49.
[c] In Libro Rubeo Scach. lib. i. cap. 10.
[d] Leg. Wm. I. cap. 26 et cap. 53; et Hen. I. cap. 91, 92.
[e] 1280, Pol. Virgil. lib. xvii. p. 323, et alii.

8. To which I may add, that the wisest princes have, on all occasions, disclaymed that interest, as what they stood not on. Henry the 4th[a] made open profession he did not challeng the crowne that way. Neither did Henry the 7th at all make use of that tytle, whom yet it did most concerne, if wee beleive Sir Edward Cooke.[b]

9. But if it bee graunted William the First came in as a conqueror, as certainly he was so absolute, "cuncta divina simul et humana ejus nutum expectabant,"[c] will it therefore follow his successors have the same interest? surely no; for they, the people beeing in pursuance of their auntient liberties, were received not without a solemne oath or promise to maintaine their subjects in their accustomed freedome.

10. William the Second, (William Rufus,) desiring to possesse himselfe of the crowne, finding Lanfrank not so forward as he wisht, "sine cujus assensu in regnum assisci nullatenus poterat,"[d] and fearing the danger of delayes, did make solemne protestations that hee would use "justitiam, æquitatem, misericordiam per totum regnum si rex foret," and on those termes was crowned by the Archbishop; and, soone after, his uncle Odo and divers others advancing the tytle of his elder brother, by which meanes hee needed help from the English, whom hee summoned by writ,[e] insisted on three things hee would confirme unto them "bonas leges, tributorum levamen, liberas venationes;" by which hee so wonn them that Ordericus Vitalis[f] remembers 300,000 did suddainly list themselves in that service, by whose valor hee easyly supprest Duke Robert's party. But though hee were free in propounding, yet his performance did not answer their expectation; of which being by Lanfranck put in mind, his defence was, none did keepe all promises;[g] which yet, after the Archbishop's death, hee did againe renewe in a sicknesse at Glocester; but beeing recoverd, for the execution he placed those

[a] Rot. Parl. 1 Hen. IV. n. 56.
[b] Inst. iv. p. 37.
[c] Eadmer. lib. i. p. 6, 21.
[d] Eadmer. lib. i. p. 13.
[e] Invitatoriis Literis. Mal[m]s. fol. 68, 10.
[f] Lib. viii. anno 1087, p. 667, lin. 1.
[g] Eadmer. lib. p. 14, 4; ibid. p. 16, 36.

"qui justitiam evertere magis quam tueri defendereve curabant,"[a] etc.; and, indeed, I doe not remember the people of this nation did, under any king, endure greater servitude then in his tyme.

11. Which made them, no doubt, not so ready to advance his brother Henry the 1; for then, as Mal[m]sbury[b] observes, there was some controversy amongst the nobilyty, which, by the wisdome of Henry Earle of Warwick, was pacifyed beefore hee could bee "in regem electus," which the very charter hee did graunt at his coronation (by which he restored them their auntient freedomes,) doth in some sort witnesse. "Sciatis," says it, "me Dei misericordia et communi consilio et assensu Baronum regni Angliæ ejusdem regni regem coronatum esse," etc. But how that action was carryed, because no man hath it so fully as Mathew Paris,[c] in his Historia Minori, a booke not yet printed, I will from thence set it heere downe.

12. "Congregato Londoniis clero Angliæ et populo universo, multis solito et pluribus emollivit omnes pollicitis amplioribus et blandis sermocinationibus, omnium procerum constantiam enervavit, Robertum Ducem depravando et seipsum collaudando: promisit insuper legum emendationem quibus oppressa fuit injuste Anglia [tempore] Willielmi patris sui, similiter et Willielmi fratris, et hoc juramentorum firmissima assertione confirmabat, et sic animos omnium in sui promotionem et amorem illaqueavit, ita videlicet ut nullum præter illum in regem susciperent et patronum. Respondit igitur regni universitas asserens, quod si animo volenti ipsis concederet et carta sua communiret illas libertates et consuetudines antiquas quæ floruerunt in regno tempore Sancti Edwardi regis, in ipsum consentirent et in regem unanimiter sullimarent; præsertim cum absens fuisset Robertus hæres legitimus, nec possint sine maximo periculi discrimine diutius expectare. Henrico autem hæc omnia vultu serenissimo cum multiplici juramento concedente, et se id illico facturam indubitanter affirmante, consecratus est in regem, apud Westmonasterium, in die assumptionis beatæ Mariæ, favente clero et populo universo."

[a] Eadmer. p. 19, 32. [b] Mal[m]s. fol. 88, a. 21. [c] Hist. Minor, anno 1100.

13. Heere was a plaine stipulation betweene the king and the subject, their old lawes restored, their auntient liberties asserted, and he received king, who the yeare following was not without feare of some stirrs from Normandy, nor voyd of suspicion of his owne subjects at home. And they likwise, in doubt that hee, beeing in full peace, "legibus effæratis desæviret,"[a] both the nobility and commons did constitute Anselme "medium inter se et regem, quatenus[b] ei vice sui, manu in manum porrecta, promitteret justis et sanctis legibus totum regnum quoad viveret in cunctis administraturum." 1106, hee againe made profession to keepe them as hee had often before sworne to have done; where he calls them their "antiquas libertates;"[c] by which hee did then so assure the English to his party as hee not only defended England but tooke Normandy from his brother.

14. And indeede (however Mathewe Paris[d] sayes otherwise) hee seemes to me to have very justly kept his word, not onely restoring the lawes of the Confessor,[e] and the customes of the countrey, by him called "lex provinciæ,"[f] but enumerating the prerogatives of the crowne, and the penalties the subject lay under for severall offences, advising in cases of difficulty to have recourse to Westsaxe,[g] as the fountain; which, as I beefore touched, had beene very improper, had hee not restored the English lawes. It is not improbable but he might in the execution of them shew some more rigor then this nation had beene accustomed unto, which made them esteemed heavy, but certainly the times then required it; and hee, looking to the due observance of them, atteyned the name of the Lyon of Justice.[h]

15. This king had by his lawfull wife two children, a sonn and a daughter.

[a] Eadmer. lib. iii. p. 59, l. 4. [b] Sic lego, non *quantus*, ut in impressis.
[c] Mat. Paris, Hist. Major et Minor, anno 1106.
[d] Anno 1106, p. 83, 24; et p. 84, 30. [e] Leg. Hen. I. cap. 2.
[f] Cap. 9, p. 181, 58; cap. 10, 13, 19, 43.
[g] Cap. 70, p. 202, 34; cap. 87, p. 210, 41. [h] Hoveden, fol. 349 b, a.

His brother Robert, returning from the Holy Land, marryed in Apulia [a] a lady of great worth and virtue, who cominge into Normandy dyed there of poyson, 1102, leaving a son behinde her called William, who, when Henry conquered Normandy, was presented unto him; but hee, finding the child dismaid with his father's misfortunes, comforted the youth, and either neglecting his power, or to avoyed suspition, committed him to the tutelage of his sister's husband, who performed it with so much care as though the king after laboured sollicitously to gett him into his custody, he never could. This child proved a person of great hopes, on whom Fulco, earl of Anjou, resolved to bestow his daughter, had not the marryag beene diverted by the threats, prayers, and money of Henry. He marryed the sister of the queene of France [b] by the mother, by which meanes he was by that king invested in the principality of Flanders, and like to have bred our Henry much trouble (beeing hardy in his owne person, and by his example fit to incourage others), had not death, the 27th of August 1128, taken him away.[c]

16. But beefore this, to secure all things as well as might bee, 1114,[d] Henry caused all men generally to sweare fealty to his sonn, whome hee espoused to one of the Earle of Anjou's daughters, but that youth being cast away, 1119, in his journey from Normandy,[e] 1129 his daughter (the onely lawfull child he then had living) hee bestowed upon Gefferey earl of Anjoy,[f] two yeares after hee had caused his subjects promis him by oath to receive her for their queene after his death; and now beeing marryed, 1131,[g] hee caused them again to renewe the same at Northampton. Certeinly this prince did go as far as humane policy could reach to establish his daughter after him in his seat, which yet shee could never atteyn.

17. Henry the 1, 1135, dyes in Normandy, upon whose death

[a] Gemiticensis, lib. viii. cap. 14, 16. Ordericus Vitalis, p. 810, a, 821 c, 837 d, 838 b, 876 b, 884 a, b, 885, 886 a, b.

[b] P. 884, c. [c] Gemet. [d] Mal[m]s. fol. 93 a, 47; et Mat. Paris.

[e] Ordericus Vitalis, p. 889 a, b. [f] Mal[m]s. fol. a. 44, et

[g] Fol. 100, a. 45.

many outrages were heere committed, Stephen his nepheue and the empresse both in those parts; but she delaying her journey hither, and hee making hast, though hee were denyed enterance at Dover, and excluded out of Canterbury, yet was by the Londoners met and fetcht into their city with great joy, and soone after a councell held, in which was considered the miseries the kingdome had sustained in this Interregnum, as I may terme it: That of necessity they must make choise of one who would preserve the peace of it, oppose the rebellious, and mainteyn the lawes. That it was their right, upon the death of one king, to substitute another to succeede.[a] That for the person, of all other Stephen was the fittest, "tam generis dignitate, quam animi probitate." In short, they made this compact,—to support him with their treasure and strength; and hee to proceede in the setteling the peace of the kingdome, according to their advise and counsel.

18. Mathew Paris,[b] somewhat more short, tells that "convocatis Londoniis regni magnatibus meliorationem legum promisit, juxta voluntatem et arbitrium singulorum:" Newbrigensis,[c] that, though he kept nothing, yet he agreed to whatsoever "præsules et proceres exigere voluerunt." And thus it seemes to have beene carryed in generall, though not without opposition, especially by some of the clergy, so potent a party in those dayes, as the bishopp of Winchester, Stephen's brother, and the pope's legate, said openly in councell, 1142, "Cleri Angliæ, ad cujus jus potissimum spectat principem eligere simulque ordinare;"[d] and indeede the archbishop of Canterbury is remembred to have opposed him on two grownds: 1. That his election was not generall, "Sicut, inquit, rex ad hoc eligitur, ut omnes regat electusque imperii sui jura omnibus injungat, sic congruit ut ad eum in regno confirmandum omnes convolent, parique consensu quid statuendum quidve respuendum ab omnibus provideatur."[e] 2ly. In respect of the oath taken[f] in the late king's

[a] P. 928 b. Gest. Stephani. [b] Anno 1135, in Vita Stephani. [c] Lib. i. cap. 4.
[d] Mal[m]s. fol. 107, a. 2. [e] Gesta Step. p. 929 b.
[f] Ibid. et Gervas. Dorobern. col. 1340, 18, 20.

time for receiving his daughter, from which he could not bee removed till some one of the greatest (which seemes to have beene Hugh Bigot[a]) did upon his oath deliver that Henry at his death did releas them of that obligation.

19. But one of the cheifest in advancing Stephen was questionlesse his brother, a bishop, and the pope's first legate in England, who, as himselfe affirmed, became his suerty, "quod sanctam ecclesiam honoraret et exaltaret, et bonas leges manuteneret, malas vero abrogaret;"[b] after which the concurrence grue so generall (though his coronation[c] was celebrated with the presence of onely 3 bishops, no abbot, "et paucissimis optimatibus,") the earle of Gloucester, Henryes sonn, the onely person likly to oppose him, "sibi homagium fecit, sub conditione scilicet si dignitatem suam sibi servaret illæsam."[d] Thus, at the first, things succeeded well, every one finding some excuse to palliate their breach of faith to the dead; as the bishop of Winchester,[e] that he did it in the empresse her absence to settle the peace of the kingdome; the bishop of Salisbury, that his promis was made upon the assurance the king gave not to match his daughter out of the realme but by his and the rest of the nobilities assent, when none were made privy to her maryage with Anjou but the earle of Gloucester, Brian Fitzcount, and the bishop of Lusson. Thus these men made a tytle for Stephen, himselfe in the interim standing upon his election "assensu cleri et populi," his beeing crowned by the archbishop, and his being confirmed by the pope.[f]

20. But Stephen had to doe with a strong party, though but a woman, a lady in the prime of her tyme, aged about 32 years, of an active spirit and able body, much depending on her owne judgment, so as wee heare very little of her husband, though he lived 15 yeares of her stirs, in which shee interessed her sonne, 1142, so soone as hee was fit for military employment,[g] constant of her word, so as shee

[a] Radul. Diceto, anno 1135, col. 505, 49.
[b] Mal[m]s. fol. 106, b. 46, f. 101, a. 21, 30.
[c] Mal[m]s. fol. 101, a. 26.
[d] Mat. Paris, anno 1136, p. 100, 7.
[e] Mal[m]s. f. 106, b. 45.
[f] Mal[m]s. fol. 101, b. 16.
[g] Mal[m]s. fol. 107, b. 12.

lost perhaps the pope's legate, that shee might not break her promis; that would in all actions have her selfe a part, by which shee did undergoe some tymes great hazards: as her carriage like a deade body in a coffin from the Devises to Glocester, 1141,[a] her escaping in the dead of night by the help of ice and snowe out of Oxford the yeare following, and some other, sufficiently witnesse, and yet with them seemes nothing dismayd.[b] But, on the other side, high in prosperity, so as shee is noted to have suffered the king of Scotland,[c] the earle of Gloucester, her great assistance, and the bishop of Winchester, newly brought into her party, to sue kneeling on the behalfe of some without ever rising unto them "ut decuit;" and exacting from the citizens of London, who with all honor received her "ore imperioso," a great summ, which when they excused, desiring some moderation, "illa torva oculos, crispata in rugam frontem totam, muliebris mansuetudinis eversa faciem, in intolerabilem indignationem exarsit,"[d] telling them it was not just in her to spare those had spent so much in maintaining the king against her. And when they did further supplicate her to restore the lawes of St. Edward, and remove her father's as too severe, "præ nimia austeritate non acquievit eis,"[e] though in those tymes her brother Robert did labor to drawe the subject to her party, by promising them justice, and "patrias leges;" whose temperat wisdom not harkned vnto cost her deere, for the Londoners combining with king Stephen's wife, tumultuously[f] by ringing of bells called themselves together, and had seized on her person had shee not secured it by flight, reduced after (they still her enemyes) to that poverty she had not to eate but by the bounty and care of the earle of Hereford.[g] Certainly it is all tymes daungerous for a prince to fall out with a populous city, who, as they are great assistantes, so their ritches and numbers make them able to bee

[a] Continuat. Flor. Wigor. anno 1141, et Gervas. Dorobor. col. 1356, 37, et anno 1142.
[b] Gesta Stephani, p 957 c. [c] Ibid. p. 954 b. [d] Ibid. c. d.
[e] *Graves*, Flor. Wigor. anno 1141, p. 542; et Chron. Gervas. col. 1355, 34.
[f] Gest. Steph. pag. 955 a.
[g] Contin. Flor. Wigor. anno 1141, p. 542; et Chro. Gervas. col. 1355, 34, 52.

powerfull enemyes; but much more when peace is not so setteled as the lawes can have their full course. Charles the 8th[a] entering Florence, 1498, as a conqueror, though he did in the end relinquish that clayme, yet his demands were such as the Florentine did not know how to answer them, tyll one Pierro Capponi, a citizen, hearing their extravagancy, tooke the paper out of the secretaries hand, and in the king's sight tore it, adding, The French should sound their trumpets, and they would ring their bells: inferring the sword must determine those disputes; which beeing observed, the king not willing to have so great a city his enemy, condescended to more moderate conditions; and surely if the empress had carryed her selfe heere with that temper, king Stephen could never more have appeered at the head of an army: but now to that I was treating of.

21. When things went well on the empresses part, the bishop of Winchester, the pope's legate,[b] opposed by both king and queene, 1138, in his poursuit to bee archbishop of Canterbury, seeing the declyning of his brother's fortune, and solicited to receive her as "Dominam Angliæ," agreede, on certayne termes touching the government of the church and state by his advice, that "quam diu ipsa pactum non infringeret, ipse quoque fidem ei custodiret;" which did much shake the other party, and had no doubt utterly broken it, had he not, moved by the teares and prayers of his sister,[c] applyed himself to that side againe, professing all the nobillity to have been very just in observance of their faith to the empresse, but that shee had kept none to them, not knowing how to make a modest use of her successe.

22. King Stephen, 1152,[d] laboured, by getting him crowned in his tyme, to have setteled the descent on his sonn;[e] but Thomas Becket, afterward archbishop, and now of the clergy, either by his owne wisdome, or distilled into him by others, had procured for the pre-

[a] Guicciard. lib. i. p. 116.
[b] Gervas Dorober. anno 1138, in fine anni.
[c] Mal[m]s. 107, b. 15, 1.
[d] Hunt. fol. 226, b. 32.
[e] Gervas. Dorober. anno 1152, col. 1371, 65.

venting of it the pope's inhibition to the bishops, "ne filium regis in regem sublimarent;" and this is the first action I find that great prelate (as he afterward proved) to have interessed himselfe in; which he pursued with so much wisdome, as, notwithstanding the opposition of the cardinall St. Angelo, telling Eugenius 3, "facilius posse teneri arietem per cornua quam cauda leonem,"[a] he brought letters to the archbishop, which served so well for an excuse, as, though the king used some hard measure towards them of his inclination, yet they could no way bee removed from denying him that ceremony; the archbishop himselfe finding means to escape beyond seas, wisely foreseeing the English, who had now layn 17 yeares together under the miseries of a civill war, this might have served as a colour to have continewed them longer, and have made Stephen alltogether avers from any harkning to peace; but the young man dying soone after, added much to the conclusion which soone after followed, in which Stephen, remayning king during his life, did constitute "Henricum ducem Normanniæ post se successorem regni Angliæ, et hæredem suum jure hæreditario, et sic ei regnum Angliæ donavit et confirmavit," etc. The other articles I shall not neede to mention, the whole being now printed in Brompton.[b]

23. But heere are two things that me thinks history is very silent in: the one, by what perswasions the empresse, who had soe much struggled for the crowne, was now drawn wholy to relinquish her interest; the other, what tytle Henry accepted it by; for if by inheritance, then certainly his mother, who lived to the 15th yeare of his raigne, ought to be preferred beefore him; if by stipulation beetweene king Stephen, himselfe, and the kingdome, then wee must graunt such compact of power to turne the descent of the crowne out of its right course; and though it bee probable the sonn did much harken to the mother's counsells,[c] as a person of great experience made wise by many troubles, yet it is suer he did not allwayes,

[a] Baron. to. 12, anno 1148, n. 36.
[b] Col. 1037, 65.
[c] Rob. de Monte, anno 1156.

as is gathered by his making Thomas Becket archbishop of Canterbury, eyther out of gratitude for the good service he had formerly done him in opposing the coronation of Stephen's sonne, or out of the worth of the man, which shee, a lady that had aswell studdyed men as businesse,[a] in private disswaded, knowing, as it seemes to mee, that prelat's spirit, so unapt to bee governed, as I cannot without admiration read the prayses the best writers of those tymes bestow upon him. Johannes Sarisburiensis[b] compares his death for the manner of it with our Savior's; yet his expressions, which are very high, seeme to me more modest then those of Petrus Blesensis,[c] who goes so far that the Jesuite who lately printed him, is forced to say it is "plus æquo." Not that the very age did want some of unshaken loyalty to their prince: such was the learned bishop of London, Gilbert, whose Epistle concerning that matter is yet extant in Hoveden, and others, witnesses of his great judgment; to whom I may add Neubrigensis,[d] who thought the archbishop's actions "nequaquam laudanda."

24. Stephen, the 23th of October, 1154, dyed, Henry then in France; yet England in great peace (which was not usuall on the death of kings),[e] expected his coming, where he arrived December the 7th, and upon Sunday the 19th, "apud Westmonasterium ab omnibus electus est et in regem unctus;"[f] or, as Mathew Paris[g] relates it, "ab omnibus rex acclamatus est, et a Thobaldo in regem consecratur." This prince, as hee was one of the greatest this kingdome ever had, so was hee a wise man, and that studdyed the good of his people as much as any. Petrus Blesensis[h] reports no man to have beene "argutior in consiliis, in eloquio torrentior, securior in periculis, in prosperis timidior, constantior in adversis," etc.

[a] Epist. Tho. ad Gilbertum, et Epist. Suffragan, ad Thomam apud Hoved. fol. 291, a. 28; f. 292, a. 34.

[b] Epist. 286.

[c] Epist. 46, 27.

[d] Lib. ii. cap. 16, in fine, et cap. 25.

[e] Mat. Paris, anno 1154.

[f] Rad. Diceto, anno 1154, col. 529, 18. Rob. de Monte, 1155.

[g] P. 123, 21.

[h] Epist. 66, p. 115.

The Dialogue of the Exchequer,[a] attributed to Gervasius Dorobernensis, but writ questionlesse by Richard Ely, or Fitzneal, bishop of London, his treasurer, as I doe gather by the redd booke of the Exchequer, in which it is found, fol. 47 a, col. i. sayes, "Ab ipso suæ dominationis exordio totum ad hoc direxit animum, ut paci rebellantes et discolos multiplici subversione contereret, et pacis ac fidei bonum in cordibus hominum modis omnibus consignaret," etc.; and that though he met with many oppositions, yet was his mercy such that "eorum pauci rerum suarum, nulli vero status sui vel corporum dispendia sustinerent;" yea, when he had them in his power, "maluit expugnatis parcere quam punire, ut ejus regnum crescere videant vel inviti."

25. Hee wisely foreseeing nothing could give a people a durable happinesse, or settle any kingdome in a continewed way of subsistance, but the due administration of justice, at his very entrance renewed his grandfather's lawes,[b] and for the dwe execution of them, 1176, sent learned judges throughout the kingdome, by whom (as one that then lived observes), "post naufragum regni statum pace reformata, iterum studuit avita tempora renovare, et eligens discretos viros secuit regnum in sex partes, ut eas electi judices quos *errantes* vocamus perlustrarent, et jura destituta restituerent,"[c] etc.

26. And because the justices might bee swayd by love, feare, affection, or otherwise, and his inferior officers oppresse the poore, his eare was not onely open to such as complayned of their excesses, but himselfe "per provincias excurrens explorabat facta omnium, illos potissime judicans quos constituit judices aliorum."[d] From which custome, perhaps to this day continewed, is our kings ridinge progresse into the farther partes of their kingdome. From which deportments of his, no doubt, the subject (inured to an harder yoak under former kings) grewe so in love with his government, as the Dialogue I before mentioned makes this exclamation: "Vivat in

[a] Lib. ii. cap. 5.
[b] Hoved. anno 1156, fol. 282, b. 21.
[c] Dialog. de Scach. lib. ii. cap. 5; Hoved. fol. 313, a. 52.
[d] Pet. Bles. epist. 66 et 95.

longa tempora rex ille gloriosus et felix; pro impensa gratia gratiam mereatur ab alto; vivat et proles ejus ingenua patri suo subjecta nec ei dissimilis, et quia nati sunt populis imperare, paterno simul et proprio discant exemplo, quam gloriosum sit parcere subjectis et debellare rebelles."[a] And certaynly those were happy dayes, for Magna Charta refers things to bee carryed no otherwise then they were in his tyme;[b] a certayne token the law was then duely administred.

27. By all this it is manifest Hen. 2. did not stand upon the tytle of conquest; which may bee farther gatherd by that hee labord as much as was possible to settle it upon his posterity by ordinary wayes; and, therefore, upon St. Barnabyes day, 1170, hee held a great councell, "cum principibus et magnatibus terræ,"[c] touching the crowning his sonne, which hee did the 15th of June following, "clero et populo consentientibus et assentientibus," though, beefore the ceremony were well ended, hee repented him of it, for that young prince, meetinge with such as were apt to flatter that ambition he was too prone unto, as the speech used to his father upon the day of his coronation did enough testifie,[d] was quickly by his mother and her friends induced to think his father had too much and himselfe too little part in the government,[e] which drewe him into continewall stirs till his death, which fell out 13 yeares after;[f] which his father, what ever his disobedience to him had beene, is remembred to have immoderately grieved at, so hard it is for parents to forget their children; but never did hee after in his tyme set the crowne on any other of his sonnes heads.

28. Anno 1189, Henry the 2. dyed, leaving two sonns, Richard, and a grandchild called Arthur, the sonn of Geffry, who was yonger then Richard, but elder then John, and cast from his horse[g] in a tylt at Paris and troden upon, there ended this life, "adversa valetudine

[a] Pet. Bles. epist. 66 et 95. [b] Magna Charta, cap. 15, 16, 35, 37.
[c] Hoved. fol. 296, b. 18.
[d] Mat. Paris, Hist. Minor, anno 1170, et Major, anno 1146, pag. 936, 39.
[e] Mat. Paris, anno 1172, p. 169, 18. [f] Peter Blesen. epist. ii.; et Hoved.
[g] Hoved. fol. 360, a. 39.

pressus,"[a] 1186, leaving by the heire of Brittaigne a daughter called Alienor (who lived to be "annosa,"[b] an unfortunate lady, for the most part kept in prison), and her mother great of a sonne, whom she called Arthur. Of this lady Philip of France, sirnamed Augustus, demanded the tutelage, as heir of Brittaigne, before the birth of her brother, but to that our Henry would by no meanes assent. But there was no question now who should succeede, Richard beeing the eldest living; and, as it seemes to me, the only prince from the Conquest to Edward the First had an unquestionable hereditary right, for William the 2. and Henry had, most part of their tymes, Robert and his sonn with pregnant tytles before them, Stephen claymed by election, etc. Henry the 2. had his mother living when hee entred on the crowne, but Richard had no competitor; yet Diceto[c] says, "Hæreditario jure promovendus in regem, post tam cleri quam populi solemnem et debitam electionem, involutus est triplici sacramento," etc.

29. This king, in his journey to the Holy Land, touched at Sicily, and there treated with Tancred, the king of it, about a mariage to bee had betweene his nephewe Arthur (as heyre after him, if hee miscaryed, to the crowne of England,) and a daughter of the said Sicilian, of which hee certifyes the pope by letters of the 11 of November, 1190.[d] Yet afterward, though he were highly enraged with him at his returne from the Holy Warr,[e] their mother makeing peace between them, hee appoynted at his death John should succeed in this kingdome, his castles, forts, and three parts of his treasure to bee consigned unto him, and all about him to doe him fealty, without any consideration of the title of Arthur or his sister, as indeede I never finde hers (who lived to the 25th of Henry the 3.)

[a] Gervas. Dorober. col. 1480, 31.

[b] Mat. Paris, Hist. Minor, anno 1241; et Hen. Knighton, col. 2417, 29.

[c] Col. 647, 47.

[d] Hoved. fol. 385, b. 386, a.

[e] Hoved. anno 1194, fol. 418, b. 8; 419, a. 45; 421, a. 21; anno 1195, f. 428, a. 21; 449, b. 38.

at all mentioned, but onely once casually by the Pope,[a] makeing it better then that of the French.

30. King Richard dying 1199, his brother John in France, where many adhered to Arthur, caused himselfe first to bee invested in the dutchy of Normandy, but thought it not fitt to adventure hither till, settleing things there, hee might have assurance how hee was like to bee received in England; so he sent hither the archbishop of Canterbury, William Earl Marishall, and Geffrey Fitz-Pierce, men of great experience, who swore all unto him,[b] stiling him only duke of Normandy, not taking on him the tytle of England, being uncrowned; and this seemes to mee to confute Pol. Virgill and our common historians, affirming the first king had fealty sworne unto him beefore his coronation to bee Henry the Fifth.

31. At Northampton, such as king John had most cause to mistrust were appoynted to meete, wher those noblemen "fecerunt illis fidem quod prædictus Johannes Normannorum dux redderet unicuique illorum jus suum, si ipsi illi fidem servaverint et pacem."[c] Upon which, "juraverunt Johanni duci Normanniæ fidelitatem et fidele servicium contra omnes homines," etc. Soone after which, himselfe came into England; at whose crowning the archbishop made a set speech, how none of right ought to succeede in the kingdome,[d] "nisi ab universitate regni electus;" not but that if any of the royall blood were fitt, they would sooner assent to him then any other, and therefore they had all made choyce of John, who accepting of it, and the people crying Vivat Rex, he was sworn king, but adjured by the archbishop not to accept that honor unlesse he really intended to performe what he had by oath promised. Of this, Lewis of France, in a letter to the abbot of St. Augustine's, 1216, writes thus,[e] "Hubertus quondam Cantuariensis archiepiscopus in

[a] Mat. Paris, anno 1216, p. 381, 3.
[b] Hoved. fol. 450, b. 45, 54, anno 1199.
[c] Hoved. fol. 450, b. 53.
[d] Mat. Paris, p. 264.
[e] Apud Wm. Thorn, col. 1869, 4.

coronatione ipsius Johannis publice dixit, quod non ratione successionis sed per electionem ipsum in regem coronabat."

32. This king, as he was reported to have made away his nepheue Arthur with his owne hands, so either for that or his other offences was by God very severly chastised; the kingdome beeing interdicted, himselfe excommunicated, and forced with the resignation of his crowne to buy his peace from the pope; which act was performed, the archbishop (however his not admittance to the sea of Canterbury was the grownd of the difference betwen Inocentius 3 and John), not onely "clam et palam reclamante cum profundis suspiriis,"[a] but at the altar of St. Paul makeing a solemne and publique protestation against it;[b] which, as it did shew the clergy were not then so much addicted to Rome as made them forget the rights of the crowne, so their labouring afterwards to settle the liberties of the country, by restoring the auntient customes drawne into Magna Charta, did that (notwithstanding their calling) they might bee esteemed no ill patriots.

33. This protestation of the archbishop makes me remember what Henry the 2.[c] writ to Alexander the 3., desiring his assistance against his sonns: "Vestræ jurisdictionis," sayth hee, "est regnum Angliæ, et quantum ad feudatarii juris obligationem vobis duntaxat obnoxius teneor et astringor." I confesse I doe not understand in what sense this king spake it, for certainly beefore king John never any pope claymed England as a fee of the church; and the charter by which he then made it so is, by the writers of those tymes,[d] esteemed and styled no other then "Scriptum execrabile" and "detestabile," hath beene by succeeding kings ever opposed,[e] and to the uttermost; and Sir Thomas Moore (a man famous for his devotion

[a] Mat. Paris, Hist. Minor, anno 1245; et Major, p. 923, 11.

[b] Anno 1231, p. 496, 2.

[c] Apud Pet. Blesens. epist. 136.

[d] Mat. Paris, ibid.

[e] Vide Rot. Claus. 3 Ed. I. memb. 9, in Schedula; et Rot. Parl. 40 Ed. III. n. 7, 8; et hic cap. x. n. 4.

to Rome),[a] sayth, that "it is untrue to affirme king John made England and Ireland tributary to the pope and the sea apostolick; that all Rome neither can shew such a graunt, nor never could; and, if they could, it were of nought worth, for never could any king of England give away the realme to the pope, or make the land tributary, though hee would; nor no such mony is there paid, nor never was."

34. King John intending an expedition into France, 1213,[b] the nobility excused their attendance on him, in respect hee was not yet absolved. This made him hasten his reconcilement with Rome, which was the same yeare performed at Winchester, about the 20th of July, at which time hee tooke a solemne oath to defend the church; to renew the good lawes of his predecessors, and in especyall those of K. Edward; that he would distribute his justice "secundum justa curiæ suæ judicia." And this in effect is the oath by which the kings of this nation, if not beefore, yet undoubtedly have since, at their consecration, given their people assurance of preserving the lawes; and it seemes, as the kings were in former tymes often crowned,[c] so they did frequently repeat it for the greater security of the subject. "Ego,"[d] sayth Henry the 1, "vos in antiquis vestris libertatibus prout crebrius jurejurando promisi gestio confovere;" and elsewhere the same auctor, "quam (scil. Magnam Chartam) pater ejus rex Johannes tenere juravit, et similiter qui præsens est, in susceptione coronæ suæ et postea multoties;" yet our kings are not legally, at any time, required to take an oth, but only at their coronation.[e] "Le roy n'est tenwz de fayre nul serement envers nulles de ses lieges si non le jour de son coronement, ou pour comune profit de luy et de son royalme."

[a] The Supplication of Soules, p. 296 c. inter opera ejus, edit. Lond. 1557.

[b] Mat. Paris, p. 319, 8.

[c] Vide Hoved. fol. 420, a. 40; Mat. Paris, anno 1201, p. 275, 32.

[d] Mat. Paris, anno 1106, p. 83, 7; anno 1253, p. 1154, 41; anno 1258, p. 1292, 41; et alibi.

[e] Rot. Placit. Parl. 11 Ric. II. n. 6, art. 2; et Hen. Knighton, col. 2715, 51.

35. In the same yeare his majesty gave expresse order to his officers[a] to take by force nothing from any man, and that they should observe his grandfather's lawes; but at that time intending to warr against some grandees, who had, as it were, quitted him in a journey into France a little before, the archbishop threatned excommunication to his party, as against his oath, at the absolution, "Si absque judicio curiæ suæ contra quempiam bellum moveret;" to which, though hee is remembred to answeare,—cum ingenti strepitu—"se regni negotia propter archiepiscopum non differre, cum laica judicia ad ipsum non pertineant;" yet it put such a stopp to his proceedings, as a composition did soone follow after.

36. But the prince beeing, 1215, prest to confirme Magna Charta,[b] conteining for the most part no other then the auntient rights and customes of the realme, extracted out of the lawes of the Confessor and Henry the First, swore, in a great rage, "quod nunquam tales illis concederet libertates unde ipse efficeretur servus;" which, notwithstanding, he did after make good unto them, under his great seale, when he found himselfe unable to oppose those who required the doing of it, of which there remayne some copies to this day. And himselfe had recourse to the pope; who, pretending England a fee of the church,[c] disanuld the said charter,[d] and excommunicated the barons, interdicting their possessions, (a strange manner of proceeding in a temporall cause,) who thereupon likly to have the worst, call in Lewis of France, causing him to sweare, at his coming to London, "quod singulis eorum bonas leges redderet et amissas hæreditates," on which termes they joyned with him for the expulsion of king John; a certayne signe they never intended, had he beene a conqueror, hee should have possest the crowne otherwise then by a compact or stypulation betweene them. But whilst these stirrs continewed, John ended his life, the night after the 18th of October, 1216, constituting his son Henry his successor.[e]

[a] Mat. Paris, anno 1213, p. 320, 12.
[b] Mat. Paris, p. 339, 16, 48.
[c] Mat. Paris, anno 1215, p. 357, 23.
[d] Id. p. 362, 25.
[e] Mat. Paris, anno 1216, p. 385, 20.

37. Henry, his sonne, a childe, was, the 11th day after John's death, crowned at Glocester, received without any scruple as king by such as adhered to his father, though Alienor, sister to Arthur, and daughter of Gefferey, were then living; whose clayme I find not at all insisted upon, notwithstanding the many contestations betweene these kings and their subjects, through which shee lived to 1241,[a] and then dyed "annosa," no man ever advancing her tytle, though the disputes went some tyme very high.

38. Henry, not much above nyne yeares old, thus crowned the 29th of October, 1216, at Glocester, tooke an oath for maintenance of the lawes, and, 1217, at Lincolne, had a great victory against the French, and some English joyned; which brought them soone after to an agreement, wherein the king, the pope's legat, and the earle marshall, who swayed the affayres most, as "rector regis et regni,"[b] did sweare "quod redderent baronibus Angliæ et aliis omnibus de regno, omnia jura et hæreditates suas cum omnibus libertatibus ante petitis, pro quibus discordia fuit exorta inter Johannem regem Anglorum et barones;" and, though the same were afterwards upon severall occasions confirmed by the king, as 9° H. 3, 1225, the 21 H. 3, 1237, and in a very solemne manner 37 H. 3, 1253, yet his majesty ever found means to question, dispute the validity, and break, till 52 H. 3, 1267, hee being in full peace, did, by the statute of Marlebridge,[c] confirme the same, referring to the judges the taking care to see them duly observed; since when Magna Charta,[d] in which they were comprised, was never doubted to bee law; and in that it doth conteyne in effect no other then the auntient customes of the kingdom, extracted from the lawes of Henry the 1.[e] and St. Edward,[f] and certified by oath, 1223, I may call it the foundation of our common law; and though in some few perticulers[g] (apparently

[a] Mat. Paris, Hist. Minor et Major, p. 770, 40.
[b] Mat. Paris, anno 1217, initio, et p. 406, 13, pro p. 399, 13, 46.
[c] Marlb. cap. 5.
[d] Cook, Inst. 2, p. 102.
[e] Mat. Paris, anno 1215, p. 339, 48.
[f] Idem, anno 1223, p. 423, 31.
[g] Cook, Inst. cap. 32, p. 65; cap. 36, p. 74.

for the common good) it did change those usages, yet, if I should say that never people in Europe have had the rights of monarchy better limyted, with the preservation of the subject's liberty, then the English, from this basis, I might perhaps not bee justly found fault with; for after this, which was to bee executed "tam in his quæ ad regem pertinent quam quæ ad alios," there was no intrusion into the crowne; for though Henry the 3, to prevent all inconveniences, did, 1240, cause the Londoners, Cinque Ports, and some others, sweare to his sonne, and, 1297, Edward the 1 [a] going into Flanders, the people did, as it were, make a stipulation, with lifted up hands, to crowne his sonne if he miscaryed; and Thorn [b] and Walsingham [c] affirme Edward the 3. to have beene elected by the clergy and people, yet that cannot bee construed to bee other then a provident care of leaving the kingdome in peace; for the heire being ever known in his tyme, possest the garland, and the subject, now ascerteyned of their lawes, did never combyne to place it out of the right line; as is plaine by the succeeding kings to Henry the 4th; and the "Proceres et magnates sine quibus regnum suum gubernare non poterat," [d] as they writ 1258 to Alexander the 4th, if they had any cause of offence, being heard and righted in a parlyamentary way, did more rarely oppose the right heire then they had done in former tymes.

39. Onely Henry the 4th may seeme somewhat to have turned it out of the streight course; yet certainly, though the title had never beene determined betweene the daughter of the elder brother and the sonne of the younger, but rather the practice had beene advantagious for him,[e] it fell then into consideration how the king made his clayme, and that of conquest was thought upon; but Sir Wm. Thirning, chiefe justice of the common pleas, diverted those thoughts, as what would move the people against his majestie,[f] because, "Potuis-

[a] Mat. West. p. 409, 36; Wals. anno 1298, p. 36, 40.
[b] Anno 1326, col. 2039, 27.
[c] Anno 1227, p. 107, 8, 9.
[d] Annales Burton MSS. anno 1258.
[e] See number 37.
[f] Anonymus MSS. in Bibliotheca Cotton. qui tunc vixit.

set quemlibet exhæredasse, pro votis leges mutasse, condidisse novas et veteres annullasse; et per consequens nullus securus fuisset de sua possessione, qualicunque fecerat nempe comitem Northumb. constabularium Angliæ, et comitem Westmorlandiæ marescallum, et J. Scarrile præcepit ut sigillum reciperet cum officio cancellariæ;" that is, if I rightly apprehend him, that beestowing those military offices with the chang of his seale, would induce a beleife hee intended not to governe by other [than] the marishall law.

40. But in his first parliament hee cleered that doubt, and declared hee did not make any clayme[a] unto it by conquest; and though hee made his challenge as descended from Henry the 3, yet hee did not possesse himselfe of the throne untill all the estates and people did with one voyce assent "ut dux præfatus super eos regnaret;" after which, the archbishop of Canterbury lead him (then first styled king) to the royal seat, in which (after a short prayer made on his knees) hee was by him, assisted by the archbishop of York, placed and caused to sit. And it is plaine that king did not make his sonne prince of Wales but with the parliament's[b] promis to accept him king after his decease; and whereas it had been declared in Richard the Second's tyme[c] that prince should bee in as great liberty as any his progenitors, by color of which hee did wrest the lawes at his will, which the commons in this parliament did expresse they would have now in like manner invested in Henry the 4th, which hee accepted, yet with this declaration, that it was not his intent or will, "Pour tourner les leyes, estatutz, ne bones usages, ne pour prendre autre advantage par les ditz leyes, mes pur garder les aunciens leyes et estatutz ordeignes et uses en temps de ses nobles progenitours, et faire droit a toutz gentz en mercy et veritee selon son serement."

41. By this it is certaine heere was no right of conquest stood upon. Some, perhaps, may bee apt to thinke, his claym by inherit-

[a] Rot. Parl. 1 H. IV. n. 54, 56.
[b] Rot. Parl. 1 H. IV. 71, n. 108.
[c] Rot. Parl. 14 Ric. II. n. 15; 15 Ric. II. 13.

ance being weake, hee did it to please the people, and it is no question hee was one knewe well how to humor them. For his tytle I will say nothing, but that his sonne and grandchild were reputed kings; neither was there any certaine peace setled till as well that of Lancaster as of York was provided for. It will not be easy to mayntaine his right was then esteemed nought, and (to omit other kings) affirme king John's and Henry the 3d for at least 25 yeares to have beene good; but for his aptness, out of a desire of complying with them, to gratify his subjects by parting with his prerogative, for my parte I have observed none lesse apt that way then hee, who neither would answeare any bill tyll the end of the parliament,[a] nor let the commons conferr with the lords,[b] but by especiall leave; [c] and they beeing of opinion some things were entred on the roll otherwise then had passed their house, he would not permit it to be examined but by protestation it should not bee drawne into consequence. Certainly these were no signes of great willingnesse to passe away the rights of the crowne.

42. Henry the 4th possessing himselfe of the kingdome by the destruction of Ric. 2, as it cannot be excused, so assuredly his owen conscience did many tymes represent it unto him; as that profession at his death, with a great sigh,[d] that God knew what right hee had to it, and how hee injoyed it, did manifest. But nothing hee then said did hinder the nobility, according to their engagement 1° H. 4,[e] from presently accepting his sonne as king, and before his coronation sware obedience, which, say our historians,[f] had never beene done to any in former tymes. But if that were so (to omit some kings causing fealty to be sworne to their sonns in their tymes), how were people brought to promise it to king John before his entring England? [g] This prince, as hee was most fortunate in his military atchievements, so it is admirable with how little ayde from his subjects hee performed them; for but tunnage and poundage, graunted

[a] 2 H. IV. n. 23, Rot. Parl.
[b] 4 H. IV. n. 10, Rot. Par.
[c] Rot. Parl. 2 H. IV. n. 45.
[d] Hall, 14 H. IV. in fine.
[e] Rot. Parl. 1 H. IV. n. 71.
[f] Pol. Virgil, etc.
[g] Anno 1199, fol. 450, b. 42.

him first for 3 yeares,[a] and then for his life, hee only had, anno 2, the 4 and 5, two-fifteenths and two-tenths; the 3, 7th, and 9th, one-fifteenth and one-tenth; inconsiderable summes for so great actions. But, as he was doubtlesse frugall by nature, so hee spent nothing but as his buisinesse led him, for wee never read of any favorite, or his beeing swayed by other then his owen counsells.

43. But hee dyed young, leaving one sonn, an infant, who at first setled his kingdome by advise of his parliament, which gave severall rules[b] for his councell's comportment, how it should bee not to oppresse the subject; but hee beeing a pious soule, but a weak king, the Duke of York beegan to raise his tytle, as the lyneall heyre from Lionell duke of Clarence, elder brother to John of Gaunt; which, the 39 Hen. 6, came to bee ventilated in parliament, and the 25 of October it was the opinion of the Lords[c] the tytle of the said duke could not be defeated; that Henry the 4th had unrighteously entred upon the crown, the right of the same then belonging to Edmond Mortymer, sonne of Philip, daughter of Lionell duke of Clarence; and therefore an expedient found that Henry the 6th should bee reputed king during his life, but the duke of York and his posterity should after inherit the crowne; to which both himselfe and his two sonns were to swear. And at the same tyme provision was made for not avoyding former parliaments, letters patents, nor acts judiciall, and so alway to remayne good, if there cannot hereafter bee alleadged and proved a more better and sufficient tytle to the defeating of the same Act. Which last clause seemes to me a controuling of all had beene donne, it being undoubtedly trwe that when the house of Lancaster should get a more powerfull army hee would not fayle of arguments to prove his right the more legall. And, though the first parliament of Ed. 4.[d] did assert the tytle of York, expressing that Henry the 4, 5, and 6, had beene indeede and not of right kings, yet, when himselfe was after expelled by the

[a] Rot. Parl. Leicest. 2 H. V. n. 11. et 3 H. V. n. 4, 5, Omnium Sanct.
[b] Rot. Parl. 1 H. VI. n. 28; 2 H. VI. n. 16; 8 H. VI. n. 27; 11, 12 H. VI. n. 18.
[c] Rot. Parl. 39 H. VI. n. 18, 20, 21. [d] Rot. Parl. 1 Ed. IV. n. 8. et cap. i.

earle of Warwick, returning to try his his fortune againe, 1472, finding the commons so apt to assist him for the atteyning the crown, as the dutchy of York, he made profession in every place that his intent was to make no other clayme, but only to bee restored to his dukedom, nor would have done formerly, but by the inciting of the earle of Warwick; and, if what some write bee trwe, he took the sacrament at York, and sware to obey king Henry, nor did ever make other shew, till Sir William Parre, Sir James Harrington, and others, coming to his ayd at Notingham, caused him to alter his style and make proclamation in his owne name. They are not allwayes the worst friends who use the greatest playnnes to princes; but such are the worst enemies that, under faire promises for their advantage, seeke most their owen advancement, without, as it were, looking at it: "Illi (sayth Johannes Sarisburiensis) perniciosius nocent inter omnes curiæ nugatores, qui sub prætextu libertatis et honestatis, miseriæ solent ineptias colorare;" according to that of Tullie,[a] that of injustice theirs is the greatest, "qui cum maxime fallunt id tantum agunt ut viri boni esse videantur."

44. Edward the 4th dyinge young, his two sonns [were] made away by their tyrannicall uncle of Glocester, who, resolving to take the diademe, was likewise to create himselfe a tytle; which was after this manner: hee caused a petition to bee delivered him by the three estates, to wit, the lords spirituall and temporall, and other nobles and notable persons of the commons, out of parliament, which was after confirmed in it, 1 Ric. 3;[b] in which they did lay many aspersions on the government of his late brother, as one did not follow sad and prudent advise of the nobility, but of flatterers, persons insolent, vicious, and of inordinate avarice; that, especially after his pretended marriage with the Lady Gray, the land was ruled by selfe-will, equity and law layd apart, noe man suer of his life or estate, and every maide in feare of ravishment; that the said mariage was made without the knowledge and assent of the lords of this land, by

[a] Offic. 1. [b] Rot. Parl. 1 Ric. III.

the sorcery and witchcraft of her and Jaquette dutches of Bedford, her mother according to common report, whereof too there would be proofe sufficient; that it was celebrated in a private chamber without the edition of banes, the king at that tyme standing marryed and troth-plight to dame Elianor Butler, daughter of the ould earle of Shrewsbury, by which means all his children by the said Lady Gray were bastards; that for the issue of his brother Clarence, their father being attented, 17 Ed. 4, by parliament, his posterity was for ever barred of all right to the crowne. These things considered, there was none living but himself could by inheritance of right clayme the crowne, hee beeing the undoubted sonne of Richard late Duke of Yorke, borne in the kingdome, whom they did verily deeme was naturally inclyned to the prosperity of it, beeing descended of the three most royall houses of Christendome, England, France, and Spaine. That, having great confidence in his prudence, justice, and valor, for reducing the same to its auntient, honorable estate and prosperity, etc.,

45. They declare to have chosen him for their king, and by that writing did chuse him to whom they did knowe it apperteyned of inheritance so to bee chosen; and therupon did humbly desire, pray, and require him, that according to this election, as by inheritance, he would accept and take the sayd crowne, with all thereunto annexed, to him of right belonging as well by inheritance as by lawfull election; and, in case he so doe, they promised to assist his highnesse, and as trwe and faithfull subjects to live and dye with him in this and every just quarrell, being resolved to venture their lives rather than live in such thraldome and bondage as formerly.

46. Then shew[ing] that the manifestation of any truth by the three estates in parliament is of greatest auctority for quieting men's minds and removing all doubts, etc. they adde, that at the request and by the assent of the three estates, that is to say, the lords [spiritual] and temporall and commons in parliament, bee it pronounced, decreede, and declared, that our said soveraigne lord the king was and is the very undoubted king of this realme, as well by right of

consanguinity and inheritance as by lawfull election, consecration, and coronation; the same to abide in his person duringe his life, and after his decease in the heyres of his body beegotten, and in especiall that his sonne prince Edward bee his heire apparent to succeede him in the royall dignity.

47. This promotion of Richard the 3. makes mee remember that in Tacitus,[a] "primas dominandi spes in arduo, ubi sis ingressus adesse studia et ministros." Certainly few men wee shall read of, who made not the sword wholly their right, met more diffycultys to create a tytle then this king, who yet never touched on that of conquest no more then his successor Henry the 7th did, who (though hee came in by battaile, and had the crowne, found in a hawthorne bush, after the acclamation and rejoycing of the souldiers crying King Henry! king Henry![b] set on his head as though hee had beene elected king by voyce of the people,) yet his first parliament did only establish "that the inheritance of the realms of England and France, with all dignityes to the same perteining, etc. bee, rest, remayne, and abide in the most royall person of our now souveraigne lord King Henry the 7th, and in the heires of his body lawfully coming perpetually, and in none other," not at all mentioning any title by descent or conquest; as indeede he could not well doe either, his mother, by whom he had what ever was derived unto him by descent, living all his tyme, and that way clayming before her sonne: and as for that of conquest, hee well knewe it would never be relisht by a parliament. And however both of them are remembred in the bull of Inocent the 8.[c] the yeare following (I know not on what grownd obteyned by the king for the confirmation of this statute, the doing so beeing one of the objections against Rich. the 2d.) it is certein hee did make a promis or stipulation with the lords heere to mary the lady Elizabeth, Ed. the 4th's daughter, both beefore and after hee came into England or fought with Richard; and I am perswaded if those very souldyers

[a] Annal. iv.
[b] Hall, in fine Ric. III. fol. 58 b.
[c] Bacon, Hen. VII. p. 12.
[d] Rot. Parl. 1 H. IV. n. 27.

upon whose desire hee was, after a sort, invested with the crown on the gain of the battell, had beene asked, whither they intended hee should bee assumed with the power the auntient kings onely had, or to dispose of their estates and all else at his owne will, by the way of conquest, there would have beene but a little army to have made that good.

48. Since his tyme there is no collor to speak of that tytle, his line having allwaies succeeded and ruled by lawes and parliaments. It is trwe his sonn Hen. the 8th did seeme to intend some change (whilst cardinall Woolsey guided his counsells) in the auntient frame and fundamentall constitutions of this government, calling but one parliament[a] (a principall means to keepe greatnes in order) in fourteene yeares; but in the 16. year of his raigne, going about to raise money by commission and not by parliament, hee found the people so apt for commotion (it beeing then the common speech[b] if men should soe parte with their goods, it were worse then the taxes of France, and England would bee bound and not free, etc.), as the yeare following the king disavowed the action, casting it on cardinall Woolsey, who, the 21 Hen. the 8th, was indited,[c] that hee intended "antiquissimas Angliæ et ejusdem regni populum, legibus imperialibus, vulgo dictis legibus civilibus, et earumdem legum canonibus imperpetuum subjugare et subducere." It seemes by Fortescue some beefore him were desirous to have brought in the civil lawes, though I professe for my part I doe not understand of whom that is spoken by him, having never read of any prince had in former tymes indeavoured it. Sir Edward Cook,[d] who sayes hee intended it of William de la Poole, duke of Suffolke, must doe it upon some other grownds then I have met with in the articles exhibited against him by the commons 28 Hen. 6th.[e] I finde nothing seemes to mee to sound like it, unlesse onely one place where they accuse him to have

[a] Cook, Inst. ii. p. 626.
[b] Hall, 16 and 17 H. VIII. fol.
[c] Cook, Inst. ii. p. 626, et Inst. iii. p. 208.
[d] Cook, Inst. iii. p. 208.
[e] 28 H. VI. n. 47.

beene the cause of the subvertion of the lawes and justice, and execution therof, which, whether it can bee drawne to that perticuler, I question.

Of the phrase "Electus est," in ould tyme used.

CAP. 6.

1. By this it doth appeere that however the kings of this nation have had an hereditary tytle or right, the child succeeding the father, yet they never on any occasions did, or indeede justly could, make use of that of conquest; but I confesse it hath often troubled me, and perhaps may have done some others, how they are said to have beene chosen by the people; and that not by common persons, but by grave historians, learned lawyers, as Bracton[a] and Fleta,[b] who both affirme him to bee "creatus" and "electus ut justitiam faciat universis," and indeed by all writers whatever of note of elder tymes.

2. Matheue Paris,[c] speaking of Hen. the 1. sayth hee was "coronatus communi consilio gentis Anglorum;" and anno 1237 hee speakes as if the king were only from the people or parliament, from whom hee had "omnem honorem terrenum."[d] And what is more observable, if a prince not in a direct line had beene once received, crowned, and given the subject assurance to governe them, "sanctis legibus,"[e] it was held a great offence to labor the bringing in any other, as is manifest by some of the nobilyty inclyning to favor that title of Robert, 1101, against Henry, Anselme the archbishop (esteemed the most holy and knowing man of those tymes, and since a canonized

[a] Lib. iii. de action. cap. 9, n. 3, fol. 107 a.
[b] Lib. i. cap. 17, n. 3, 14, p. 16, 18.
[c] Anno 1100, p. 76, lin. 8.
[d] Mat. Paris, anno 1237, p. 584.
[e] Eadmer, p. 59, 5, 26.

saint,) did not only perswade them to adhere to Henry, by shewing them "quam execrabiles Deo et omni bono homini forent qui fidem, quam principi suo debebant, quoquo modo violarent," but was ready to thunder his excomunications against Robert "ut invasori, nisi cæpto desisteret;" by which hee did so take of all from his party, beeing taken to tread "via virtutis,"[a] (as my auctor calls it,) that hee desisted from his clayme; yet none can doubt Robert's to have beene the better right, if wee looke onely at "primogeniture."

3. Henry the Third having invited his magnates to a parliament—for so I English "colloquium"—foure yeares beefore, they told him playnly if hee would not cast of his evill counsellors, "ipsi omnes de communi consilio totius regni ipsum cum iniquis consiliariis suis a regno depellerent, et de novo rege creando contractarent;" which, though as I doe not interpret but as a speach of violence rather then justice, yet it makes me remember that message in Henry Knighton, cannon of Leicester, to Richard the 2. 1386, from the parliament, at the ende of which they tell him playnly,[b] "Habent ex antiquo statuto, et de facto non longe retroactis temporibus experienter quod dolendum est habito, si rex ex maligno consilio quocunque, vel inepta contumacia, aut contemptu, seu proterva voluntate singulari, aut quovis modo irregulari se alienaverit a populo suo, nec voluerit per jura regni et statuta ac laudabiles ordinationes cum salubri consilio dominorum et procerum regni gubernari et regulari, sed capitose in suis insanis consiliis propriam voluntatem suam singularem proterve exercere, ex tunc licitum est eis cum communi assensu et consensu populi regni ipsum regem de regali solio abrogare, et propinquiorem aliquem de stirpe regia loco ejus in regni solio sublimare," etc.

4. There can bee no question of the truth of this, remembred by an auctor who then lived, and hath transmitted to us so many passages of parliament agreeing with the records, as are sufficient testimonys of his fidelity. Indeed, in the roll of 10 Ric. 2, there is no mention of it, but in 21 Ric. 2,[c] in the Placit. Parli. it is thus glanced at,—that the

[a] Lin. 28. [b] Col. 2683, 3. [c] Placit. Par. 21 Ric. II. n. 5.

parliament, 10 Ric. 2, "envoyerent une persone pere de la terre (meaning doubtlesse the duke of Glocester[a]), a vous tres redoute seigneur, que de lour part vous disoit par lour commandement, que si vous ne voilastes assentir de faire à eux et as autres persones queux ils voloient nomer, une commission (which is both in Knighton[b] and in the said record), pour avoir la governance en la fourme su dicte, vous fuistes en perill de vostre vie, et les seig^{rs} et coēs du parlement vorroyent de partir sanz conge de vous," as is expressed in the said message,[c] and now publisht.

5. Henry 4 coming in by a high hand, no doubt somewhat was to bee done against Ric. the 2, and we find all the states[d] did send certain deputys to carry "sententiam depositionis et ad deponendum eundem Richardum regem, ab omni dignitate, magestate et honore regiis, vice, nomine et auctoritate omnium statuum prædictorum, prout in consimilibus casibus de antiqua consuetudine dicti regni fuerat observatum;" but certainly this was rather an act of violence then justice, yet questionlesse spoke not without reference to what is beefore.

6. To the poynt of election, Fortescue,[e] a late lawyer of good note, not onely sayes hee is "erectus ad tutelam legis subditorum ac eorum corporum et bonorum," but that this power is "a populo effluxa," other then which hee cannot use; and I may not deny but I have much wonderd why that poynt of election by the people was so much insisted on by our writers in elder tymes, and I confesse I never was satisfied but by this of his, by which (if I rightly apprehend him) hee inferrs, that however William the First came in by the sword, and his line have since injoyed it hereditarily, yet they hold the crowne after the same manner elective kings doe, that is, have ever beene so regulated by the lawes and constitutions of the kingdome as such as are chosen by their subjects bee, and that the derivement of it unto them lineally was no bar in limiting their power by lawes. All children doe not succeede in their father's possessions

[a] Knighton, 2681. 36. [b] Col. 2686, 50. [c] Hen. Knighton, col. 2682, 7.
[d] Rot. Parl. 1 H. IV. n. 51. [e] De Leg. cap. xiii. fol. 32.

after one manner; some come in as heires at the common law, others by purchase, auntient entayle, and such like. So of kings; some are feudatory, as Naples, Sicily, etc.; some by election, as Bohemia, Poland, etc.; some (as I may call it) by entaile from heire male to heire male, as France; some, however, by lineall descent (the next heire succeeding to the deceased); yet hath it not allwaies beene without the approbation of the people, and such in England. I shall here, therefore, remember some such passages as I have met with since the conquest (for of the Saxons I have formerly spoke something [a]) as seemes to inferr that he was not absolute king till received by the people at his coronation; and likewise such as shew the lords and commons in parliament to have had a power in directing or setteling the diadem.

7. But heere I cannot omit, that I have never observed this assent of the people did goe about to place the crowne on any head was not "de stirpe regia." Johannes Sarisburiensis, though hee affirme both of kings and priests "in alterutro creando parentum respectus contra virtutum merita prævalere non debeat, sed salubria subjectorum fidelium vota," etc., yet elsewhere [b] hee shewes, in the succession of kingdomes, they are not "favore novorum recedere a sanguine principum;" against which he that put it out in quarto, 1513, hath in the margin added this note, "Regni successio potius ex electione debetur eis qui ex sanguine regali sunt quam aliis;" [c] which how little doth it differ from that the archbishop said at the coronation of king John, of which before, cap. 5, n. 31.

8. Indeede, from the conquest to Edward the First, what was more common then, by consent of the people, to place in the throne, as it were by a kind of compact or stipulation, some tyme one or other far differing from the right heire? and an old writer [d] remembers it was in an assembly at London, held by "majores natu consultuque provectiores," challenged, "id sui esse juris suique specialiter privilegii, ut si rex ipsorum quoquo modo obiret, alius suo provisu

[a] Cap. 3. [b] Lib. v. cap. 6. [c] Fol. 88 a.
[d] Gesta Stephi. inter Script. Norman. pag. 928 b.

in regno substituendus succederet." Mal[m]sbury being present at a councell held 1142, remembers the bishop of Winchester, Stephen's brother, then adhering to the empresse, urged in it this as a right of the clergy, "ad cujus jus potissimum spectat principem eligere simulque ordinare."[a] Yet Neubrigensis[b] sayes of Stephen, that his advancement was "contra jus humanum et divinum. Humanum quia legitimus hæres non erat." "Divinum," in respect of the oath to the empresse, by whom it seemes that, however others got betweene, yet the child to the deceased was held the most lawfull heire, allthough his right were not so absolute but the assent of the people might in those tymes be thought fit to concur.

9. It is trwe, as I have shewed before, king Stephen could not get his son to be received; but for the manner how this was, beecause there is nothing gives greater light then the ceremonies used in crowning our kings, about the tymes of king John, Henry the 3, or those beefore them, and for that, as a French writer[c] doth well observe, they doe shew the office of a king better then any thing else, as declaring how they were admitted, what esteeme our auncestors made of them, I will heere verbatim transcribe an auntient formular which I finde in an old booke in the Exchequer, writ in Edward the First raign, and then (as it seemeth) perteyning to the abbey of St. Augustine's by Canterbury, in which, amongst other muniments of that house, I found this recorded, fol. 78 a.

"*Ordo novum regem in regno constituendi.*

10. "Constituto hujus actionis die, summo mane, dominus metropolitanus et cæteri præsules cum clero in ecclesia congregentur, ut grex Christi, quid populo suo Christus inspiraverit cum mentis intentione præstolantes.

"In curia regis proceres, comites, nobilesque cuncti conveniant ad disponendum sagaciterque tractandum, tam de principis novi electione, quam de legum atque consuetudinum regni confirmatione.

[a] Fol. 107, a. 3. [b] Lib. i. cap. 4. in fine. [c] Tillet, Récueil, pag. 265.

Quibus consentientibus et id idem in omnibus consona voce acclamantibus, cum animi mansuetudine et reverentia, ut mos regni exigit, exal[tent] eum.

11. "Eo exaltato[a] [et] in sede principi apta locato, in ecclesia metropolitano et cætero clero cum summa tranquilli[tate] degenti per quatuor nobiliores comites nuncietur; faciantque idem legati coram clero, post electionis representationem, ex parte populi, cum supplicatione petitionem, ut sicut ab omni populo in regem electus est ita et in ecclesia a clero benigne recipiatur et in regem consecretur. Quorum legatione patienter audita, metropolitanus quatuor quos elegerit præsules totidemque abbates dirigat ad populum, inquirens quæ a quatuor nunciis clerus audivit, si populus testari voluerit; et illis regressis si concors fuerit priorum nunciorum vox sequentium, tunc demum metropolitano inchoante clerus Deo gratias et laudes referat. Moxque missi duo præsules a metropolitano tum parte cleri, cum cereis et crucibus introducant in ecclesiam consecrandum electum, cum vocis emissione hoc concinentes:

12. "Firmetur manus tua, et exaltetur dextra tua justitia, et juditium præparatio sedis tuæ; misericordia et veritas præcedent faciem tuam. Alleluia! Gloria Patri, etc.

"Appropinquans verò altari ejus, imitando ipsum qui dixit: 'Ne appareas coram oculis Domini Dei tui vacuus,' mensam Domini Dei sui precioso tegat pallio, libramque auri integram[b] Deo sanctoque Petro apostolorum principi princeps consecrandus desuper ponendo offerat, continuoque super pavimentum tapetis stratum coram altari se prosternat; dicat super illum metropolitanus hanc orationem.

"Deus humilium visitator, qui nos Sancti Spiritus illustratione consolaris, protende super hunc famulum tuum N. gratiam tuam, ut per eum tuum nobis adesse sentiamus adventum, per Dominum.

"Oratione completa, injungat metropolitanus cui voluerit pontificum, plebi dicere presenti negotio congruum breviter sermonem, sciscitarique ab eis ut palam dicant, si hunc cuncti sibi in regem eligant,

[a] Videtur deesse et in MSS. [b] Do. MSS.

et ut illis rex consecretur si veraciter et unanimes poscunt: quod postquam se velle ter acclamaverint interrogati,

13. "Metropolitanus electum mediocri voce distincteque interroget,

" Si leges et consuetudines ab antiquis justis regibus et Deo devotis plebi Anglorum concessas, cum sacramenti confirmatione eidem plebi concedere et servare voluerit, et præsertim leges, consuetudines et libertates a glorioso rege Edwardo clero populoque concessas.

" Si autem omnibus hiis assentire se velle promiserit, exponat ei metropolitanus de quibus jurabit, ita dicendo:

" Servabis ecclesiæ Dei, clero et populo, pacem ex integro et concordiam in domino Deo secundum vires tuas?

" Respondebit, Servabo.

" Facies fieri in omnibus judiciis tuis æquam et rectam justitiam et discretionem in misericordia et veritate secundum vires tuas?

" Respondebit, Faciam.

" Concedes justas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, quas vulgus elegerit, secundum vires tuas?

" Respondebit, Concedo et promitto.

" Adjiciaturque prædictis interrogationibus quæ justa fuerint.

" Pronunciatisque omnibus, affirmet se omnia esse servaturum sacramento super altare protinus coram omnibus.

" Hisce peractis metropolitanus incipiat excelsa voce, Veni Creator spiritus.

" Prostrato eo ante altare sequatur hæc oratio tam a metropolitano quam ab omnibus episcopis dicendo, Te invocamus Domine, etc.

" Post orationem incipient duo episcopi le[t]aniam, metropolitano cum cæteris episcopis cum eo prostratis, et septem psalmos ex corde cantantibus."

14. After this, his anoynting, assuming sandalls, spurs, sword, bracelets, pall, crowne, ringe, offering his sword on the alter, and his redemption of it by one of the earles, his taking the scepter and golden rod, beeing ceremonies, are wholy omitted in that auntient forme; not that I think there were none of them then in use, for, to

omit the others (which wee all finde in later ones), that of anoynting is thought to have beene ever used since 853,[a] Alfred was at Rome; certainly, very old it is. Newbrigensis of Stephen, "Cantuariensis archiepiscopus unxit eum in regem," and so both hee and others of Richard the 1; but beeing circumstantiall, some at one tyme added, some at an other, were therefore by him left out, who dealt onely with the materiall, and proceedeth thus:

15. "Dicto rege coronato osculetur episcopos, a quibus post ducatur honorifice ad regale solium choro cantante Te Deum laudamus, quo ad finem perducto dicat metropolitanus:

"Sta et retine a modo locum quem huc usque successione tenuisti, hæreditario judicio tibi delegatum, per auctoritatem Dei omnipotentis et presentem traditionem nostram et omnium episcoporum terræ cæterorumque Dei servorum; et quanto clerum sacris propinquiorem perspicis, tanto potiorem in locis congruis honorem impendere memineris; quatinus mediator Dei et hominum te mediatorem cleri et plebis in hoc regni solio confirmet, et in regno æterno regnare faciat Jesus Christus Dominus dominantium, qui cum Patre," etc.

16. In this formular there is not to me anything more strange then "Adjiciaturque prædictis interrogationibus quæ justa fuerint," which wee find in the ould Magna Charta, fol. et Rot. Parl. 1 H. 4. n. 17, and in all old copies of the king's oath that I have seene, and seemes to shew a right in the subject of proposing to him such things as were for publique good, and desireing they might at his coronation bee by oath confirmed, which alltogether takes away the tytle of conquest; for, if they could legally doe that, it cannot bee doubted but hee came not in alltogether on his owne termes. It is not improbable (at least to mee) on this skore it was that Hen. the 7. at his first coming to London assured the kingdome in a great councell (which could not bee his privy councell, for that was established after) hee would marry the lady Elizabeth.[b] And I remember to have heard from good hands that his grandchild queene Elizabeth, at her taking

[a] Florent. Wigorn. pag. 296.

[b] Hall, 1 H. VII. fol. 2 b.

the crowne, did give assurance not to marry any stranger; which, though I doe not find remembred by our home historians, yet was by forreyners taken notice of, as appeeres by the History of the Councell of Trent.

At her death, as I have beene told by such as had reason to knowe, the earle of Oxford, in a great assembly or councell of persons of honor, insisted king James might have some propositions presented unto him on his admission into this kingdome: as of preserving the rights of it, the lawes, etc.; the not introducing too great a number of Scots, nor they to have the government of it. Which was perhaps the designe of the earle of Essex,[a] who setting somewhat to that purpose under his hand, and that beeing after shewed to king James, did much lessen his reputation with him.

17. It seemes by this our auncestors in the elder tymes did think themselves in the government of the kingdome not meerely cyfers; and with them the ceremony of coronation was so much valued as they did hardly accoumpt any a king till Edward the First who wanted that addition, were the right by descent never so pregnant.

The like doth Du Tilet[b] observe in France; and that they did there number their king's raigne from his assuming the crowne, which in England I have not found was ever used, though our writers doe rarely give the tytle of king to any beefore, to use their owne phrase, "consecrati in reges," as is to bee seene by such as write the lives of king John,[c] Richard the 1.,[d] Henry the 2.,[e] and others, which I doe the rather heere sett beecause some very learned doe now hold his assuming the crowne no other then a declaration[f] or mark of honor, an ornament or solemnization of the royall descent, but no increase of dignity; from whence is concluded his not beeing bound to take any oath at all, for that hee is fully king beefore his

[a] Camden, Annal. Eliz. anno 1601, p. 804.
[b] Recueil, part i. pag. 192, p. 264.
[c] Hoved. fol. 450, a. 45, 54; f. 451, a. 34.
[d] Fol. 374, a. 47.
[e] Fol. 281, a. 44.
[f] Buxhor, de Magestate, p. 75; Cook, part vii. fol. 11 b.; Bilson Of Obedience, part iii. p. 498, edit. Oxon. 1585.

coronation; a collection certeynly our auncestors would not have liked, who soe often used that as a buckler and plea unto him for keeping the lawes, putting him in minde of the tye of his oath he then tooke. If the acception of the people at the king's consecration bee nothing, why were not the empresse and Henry the 7th's mother, to omit others, not esteemed queenes, but their sonnes?

It seemed to me no good omen when at the coronation of this king Charles, the bishop informing the people that his majesty came thither to bee settled in that throne God and his birth had appoynted for him, and did therefore exhort them by their acclamations to testifie their consent and willingnesse thereunto, and yet not any one answered till the earle of Arundell told them they should crye "God save kinge Charles!" by which they may bee thought rather to have beene prompted to it then to have accepted him willingly. I remember the earle of Surrey taken at Bosworth, and demanded by Henry the 7th "how he durst beare armes in behalfe of that tyrant Richard the Third?" answered,[a] "Hee was my crowned king; and if the parliamentary auctority of England set the crowne upon a stock I will fight for that stock, and as I fought then for him I will fight for you when you are established by the said auctority." Which speach of his that wise prince did so little disrellish, as hee not only soone after restored that earle to the dutchy of Norfolke, but made a law, "That no man serving the king for the tyme beeing in his warrs should incur any forfeiture thereby."[b]

19. His sonne Henry the 8th[c] did in many perticulers limit the descent of the crowne; and, for avoyding all ambiguities, the 28 Hen. 8, c. 7, did enact that, for lack of lawfull heires of his body, his highnesse should have full and plenary power and auctority to give, dispose, appoynte, assigne, declare, and limit, by his letters pattents under his great seale, or else by his last will made in writing, and assigned by his most gratious hand, at his pleasure, from tyme to tyme, the imperiall crowne of this realme, etc. to remaine, suc-

[a] Camden, in Reliquiis Apotheg. [b] 11 H. VII. cap. i.
[c] 25 H. VIII. cap. 22; 28 H. VIII. cap. 7; 35 H. VIII. cap. 1.

ceede, and come to such person or persons in possession or remainder as shall please his highnesse, and according to such estate, and after such forme and condition, as shall bee expressed, declared, and limited in his said letters pattents or last will, etc.

20. His daughter queene Elizabeth,[a] in the 13th yeare of her raigne, did likewise enact, that any who should affirme the common lawes of the realme, not altered by parliament, ought not to direct the right of the crowne of England, or that her majesty was not able to make lawes and statutes of sufficient force and validity to limit and binde the crowne of this realme, or the descent, limitation, inheritance, and government thereof, should bee adjudged a traytor. And it is remembred, at the passing this act in the house of commons, some doubting of the power of parliaments in barring the right of the crowne, Mr. Moonson, the lawyer, said, it was horrible treason to say the parliament had not auctority to determine of the crowne, for thence would ensue the annihilating the statute of 35 Hen. 8, cap. 1, and the Act of Recognition, 1 Eliz. cap. 3; and so they did deny the queene to bee queene, and the realme a realme. Indeede it is not easy to mayntaine (as most doe) queen Maries [b] and queen Elizabeth's title to the crowne to bee both good, just, and valid, and yet the mariages of either of their mothers [c] to have beene of no value nor effect, unlesse wee insist upon the power of the 35 Hen. 8, cap. 1, entailing it upon them; for such as did accompt queen Elizabeth to have right by the law of the kingdom, as Goodman, etc. must hold queen Mary illegitimate; and such as alowed her tytle for good must, with Paulus Quartus, [d] reject queen Elizabeth's.

21. Before this, in that writing I formerly mentioned delivered to Richard the 3d,[e] it is affirmed that the court of parliament is of such auctority, and the people of such disposition, that manifestation and declaration of any truth is right made by the three estates of this realme assembled in parlyament, and by aucthority of the same

[a] 13 Eliz. cap. 1. [b] Bilson, Of Obedience, p. 516. [c] 28 H. VIII. cap. 7.
[d] Hist. Conc. Trident. [e] Vide Herb. Hist. anno 1536, p. 399.

maketh most fayth and certayne quieting of men's mindes, removeth the occasion of all doubts, etc.; they doe therefore there pronounce, decree, and declare, that the said Richard the 3d was the undoubted king of England, etc. But if it bee so (as Sir Tho. Moore was of opinion),[a] that a parliament can make a king and depose him, that is, can place the crowne out of the right line where it list, and oblige men to obey it so settled, what tytle could possibly the house of York have in it? beeing certayn Henry the 4th did, both in the 5th,[b] and more in the 7th yeare of his raign, in a very solemne manner, labor the establishing of it on his posterity, causing the act to bee subscribed by 16 bishops (York, Norwich, and Rochester beeing then as it seemes vacant), the duke of York, 8 earles, the prior of St. John's of Hierusalem, 32 barons, or thereabouts, and 23 abbots, for the Lords; and by Sir Jo. Tiptot, the speaker, in the name of all the commons; yet, 25 Octob. 39 Hen. 6,[c] it was the opinion of all the lords assembled in parlyament the tytle of the duke of York could not bee defeated; yet one of the articles then objected against it was the great and notable acts of parliament made in divers the king's progenitors, the which were sufficient and reasonable to bee layd against the tytle of the said duke of York, and were of much more auctority then any chronicle, and of auctority to defeat any manner of tytle made to any person. And againe, That there was to bee layd against the said tytle divers entayles made to the heyres males as for the crowne of England, as may appeare by divers chronicles and parlyaments. To which the said duke replies:

22. "That there beene no such acts or entailes made by any parliament heeretofore, as is surmised, but onely in the 7th yeare of king Henry the 4th a certayn act and ordinance was made in a parlyament by him called, wherein hee made the realmes of England and of France to bee unto him and the heires of his body coming, and to his iiij sonns likewise, etc. And if hee might have

[a] Herbert, Hist. H. VIII. p. 393, anno 1535.

[b] Rot. Parl. 5 H. IV. n. 17; et 7 H. IV. n. 60.

[c] Rot. Parl. 39 H. VI. n. 18.

obteyned and enjoyed the said crowns, etc. by the tytle of inheritance, descent, or succession, he nether needed nor would have desired or made them to bee graunted to him in such wise as they bee by the said Act, the which taketh no place, neither is of any force against him that is the right enheritor of the said crownes, as it accordeth with God's law, and all naturall laws, how it bee that all other acts and ordinances made in the said parliament, and sithence, beene goode and sufficient agaynst all other persons," etc. An answer, perhaps, not so fully satisfactory, for it waves the maine question, whether an act of parlyament were of auctority to defeate any manner of tytle made to any person? as it was urged by the party Lancaster, and onely passing it over with a bare affirmation that that of the 7 Hen. 4 was not good against him, and yet valid as to others, which, if at least there then had beene any litigious tytle on foote better then his, were not so easy to conceive.

23. But the truth is, Henry the 6th beeing beefore that meeting defeated at Northampton, and himselfe brought a prisoner to London, that parliament was wholy at the devotion of the duke of York; yet, for my part, I have many tymes thought it strange how those very lords, who had not fully a yeare before swore and subscribed Henry the 6th[a] to bee their soveraigne lord, righteously by succession borne to raign over them and all his leige people, should now all (so far as appears), without any exception, bee brought to think the tytle of his opposite could not bee defeated; and in this I can satisfy myself with nothing but that of Martiall "Res imperiosa timor."[b] But for the thing itselfe, such as held the guift of the Confessor to the Conqueror,[c] and of king John to the pope, onely valid for wanting the concurrence of the parlyament or kingdome, must, to my understandinge, finde out some other cause why that of the house of Lancaster could not bee good.

24. Truly, it is not to bee denyed but from the Conqueror's tyme

[a] Rot. Parl. apud Coventry, 38 H. VI. Novemb. 28.

[b] Lib. xi. epigr. 59.

[c] See before, cap. 5, n. 2.

to Ed. the 1 the kingdome was rarely without stirrs at the change of a prince, and therefore some kings, for prevention of dispute, caused their sonns to bee crowned in their lives; but after the good lawes established and observed by Ed. the 1 the true inheritor was seldome doubted, and the people, growne wise by many troubles, sought not to divert it out of the right line, which bred much peace; and the frequent intercourse betweene them and their subjects in parliament, gave all security that no evill could arise but it was presently complayned of, and at the very first amended; which brought the inhabitants most happynes, and the weighty affaires of state, carryed by a joynt consent of king and kingdome, made the prince as considerable as any in Europe; and those who were employed, lying open to the complaint of the multitude, became ever faithfull in what was committed to their care, and diligent in the execution of it.

Of the liberty of the subject of England.

[CAP. 7.]

1. FLORENTINUS, the civilian, defines liberty,[a] that it is "naturalis facultas ejus quod cuique facere libet nisi quod vi aut jure prohibetur;" and this followes our Bracton,[b] and Fleta. Padre Paolo,[c] of Venice, omits the word "vi" in the definition of liberty;[d] and methinks not with[out] reason, for wee cannot so properly say any is lesse free because he is by greater strength stopt in the exercise of it, the law beeing in that case to assist him. Antonius Peregrinus, an Italian lawyer, describes it to bee "Naturalis facultas faciendi quod aliis facere licet,"[e] which in effect is the same with the former.

[a] Fl. de Statu Hominum, leg. 4.
[b] Lib. i. cap. 6, n. 2 b.
[c] Lib. i. cap. 1, p. 1.
[d] Considerationi, p. 10.
[e] Edit. Venet. 1606, p. 7.

2. The subject of England is a people hath beene ever jealous of their freedome, and their lott is to live under a law of mercy [a] that favours liberty.[b] In our hystorians wee find it mentioned under severall names: Henry the First calls them the auntient liberties of the subject; [c] elsewhere they are termed "antiquas libertates regni," "rectum [d] judicium terræ," "lex terræ," "jus regni," etc. [e] In the Acts and Rolls of Parliament they are called "la franchise de la terre," [f] "le droit du royalme," [g] "the law of the land," [h] etc.; by all which various appellations are meant nothing else but those immunities the subject hath ever enjoyed as his owne right, perteyning either to his person or his goods; and the grownd that hee doth so is, that they are allowed him by the law of the land, which the king alone can not at his owne will alter, and therefore can not take them from him, they beeing as auntient as the kingdome itselfe, which the king is to protect.[i]

3. It is manyfest these "liberties, franchises," etc. are something did precede those writers or statutes which mention them, and were a rule or square to judge and condemne what is in them complayned of. To number them all, as perhaps one might the graunts of princes, is impossible, they beeing a stopp to all novelties whatsoever which can any way happen, either by ill interpreting the law or otherwise, so as the subject may have just cause of complaint that hee is opprest. These liberties doe thus differ from the concessions of kings, in that this latter is not atteyned but by his favor and graunt, whereas the other are such rights as have conserved this kingdom in freedome since the first establishing of it in the state of monarchy.

[a] Cook, Rep. lib. viii. fol. 59.
[b] Inst. i. fol. 124 b.
[c] Apud Math. Paris, anno 1106, p. 83, 15.
[d] Ibid. anno 1234, p. 530, 10, 27.
[e] Ibid. anno 1233, p. 514, 16; anno 1258, p. 1298, 44.
[f] Rot. Parl. fest. St. Hill. 25 Ed. III. n. 16.
[g] Rot. Parl. ibid. n. 23.
[h] Vide Stat. 20 Ed. III. cap. 1; and the Petition of Right, 3 Carol.
[i] Bracton, fol. 55 b. n. 1, 2, lib. iii. cap. 9, n. 3, fol. 107 a.

And that these liberties doe well stand with the dignity and prerogative of our kings, is manifest in that they are termed the law of the land; which beeing not kept, as his majesty was bound by oath, gave the subject cause to complayn,[a] the king to bee greatly moved in conscience, and therefore to ordeyne for the ease and quiet of his people, to save his conscience and keep his oath. Neither doe wee find any complaint from the commons more frequent, then that they are not used according to the lawes and customes of the land;[b] all which shew they afford the people sufficient liberty without any trenching on his majesty's prerogative; so that it seemes to mee there is no rule for either the liberty of the subject or the prerogative of the king but the law of the land, which in some sense may be said to bee the genus, and they the two distinct species.

4. And that these enfranchisments were not such as proceeded meerely and only from the grace or bounty of our kings, is manifest for that in the oath of the king, printed in the ould abridgment of statutes, is shewed that he graunts them to hold the lawes and customes of the realme, which the folk and people have made and chosen, or, as it is in the Latin interrogatory-wise, where the bishop asks,[c] "Concedis justas leges et consuetudines esse tenendas, et promittis eas per te esse protegendas et ad honorem Dei corroborandas quas vulgus elegerit?" to which the king answers, "Concedo et promitto." By which it is very cleere those lawes which the subject of England lives under are no other but such as himself at first made choise of, which in effect is that is asserted in the statute 25 Hen. VIII. cap. 21, "in prohemio."

5. But if any object that all libertyes were at first derived from the crowne,[d] that I conceive is after the legall acception of them in the eye of the law, according to which no person or mannor can

[a] 20 Ed. III. cap. 1, in præfatione.

[b] Mat. Paris, passim; Walsing. anno 1298 p. 38, 5.

[c] Rot. Parl. 1 H. IV. n. 17; et in vet. Magna Charta, part i. tit. Juramentum Regis, fol. 164 a.

[d] Cook, Inst. ii. pag. 5.

have any priviledge but it must bee by prescription, or mediately or immediately derived from the crowne. As all Magna Charta is said to bee the king's graunt, however it did conteyn the auntient usages of the kingdome, collected out of the lawes of the Confessor and Henry the First, as I have shewed, yet in respect Henry the 3d [a] did by his letters pattents make that declaration all persons should receive right and justice in his courts according to the intent and meaning of that Charter, hee doth not unfitly affirme to have given and graunted it; it seeming injurious the subject should not acknowledge himselfe to have that from the king which hee could not but by his courts of justice any way recover. And so in all purchases wee doe say wee give and graunt, though we are well paid for what wee part with.

6. And this I take to bee the great difference beetweene the civill and the lawes of this nation; for the maxime there is "quod principi placuit legis habet vigorem," whereas this is that the kingdome shall bee governed by no other then "quas vulgus elegerit," adding a concurrence of the people with the king in making laws to bee guided by; of which freedome both strangers as well as English writers have taken notice. Innocentius Tertius, mentioning the disputes beetweene king John and nobility, in his letters 1215,[b] says hee had perswaded the king "quatenus prædictos magnates et nobiles benigne tractaret," yet so "quod si forte requiret inter eos concordia provenire in curia sua, per partes eorum secundum leges et consuetudines regni, suborta dissentio sopiretur," which seemes to me a singuler testimony of the liberty of this nation; for whereas it is a rule of that pope "unde jus prodiit interpretatio procedat," [c] agreeing with the text of the civill law,[d] and the opinion of the learned writers on that argument,[e] yet that very pope held it the

[a] Magna Charta in prohem.
[b] Apud Mat. Paris, p. 356, 36.
[c] De Sentent. Excomunic. cap. 31.
[d] Cod. de Leg. et Constitutionib. leg. 1, et leg. ult.
[e] Bodin. de Repub. lib. i. cap. 9, p. 210.

custome of the realme they should bee parties in the making of it; to which effect I have seene a notable record of 5^to^ Ed. 2.[f] in which the king asserts Magna Charta in every perticuler, yet so as if any thing bee doubtfull in it, that to bee cleered the next parliament "par l'avisement del baronage et des justices et d'autres sages de la ley, et ceste chose soit faite pur ceo qe nous n'avons mie et poer de faire le durant nostre temps;" which, if I rightly apprehend him, is noe other then a confession his majesty could not alone interpret that charter.

7. Of which perticular our auncestors seeme to have beene very carefull. Mat. Paris observes, they were as well excommunicated that "eam sinistre interpretabantur,"[b] as that were "violatores" of it, etc.; by which means the people of this land have never beene judged neither by unknown lawes nor after unknowne way, nor any man deprived either of life or estate but after a legall tryall; "peregrina judicia modis omnibus submovemus," sayes Henry the 1.[c] And the wise Roman, questioning what was the greatest cruelty the Romans suffered under Sylla, judiciously resolves his falling upon perticulars without judgment, "omnis acerbitas Sillani temporis quid habet quod maxime sit insigne ad memoriam crudelitatis, opinor pœnam in cives Romanos nominatim sine judicio constitutam;"[d] from which the frame and fundamentall groundes on which this commonwealth is built have ever secured the subject. It cannot bee denyed but there hath beene sometymes transcursions, either by the violence of kings or torrent of the tymes, but they have beene ever found fault with afterwards, and God hath used means to their auntient freedome, and to bring those who indeavoured the subverting of the lawes to an exemplary punishment.[e]

[a] In antiquo Manuscripto; et vide original. sub sigillo in Biblioth. D. Simonds d'Ewes, cap. 41.

[b] P. 1148, 10, 16.

[c] Leg. Hen. I. cap. 31. p. 228.

[d] Cicero, pro domo sua, p. 385, n. 35, edit. Rob. Stephani.

[e] Cook, Inst. iii. cap. 99, p. 207, 208.

In what sense the kings of England are not absolute monarchs.

CAP. 8.

1. I HAVE in the fourth chapter shewed the Saxon kings had not an absolute but limitted power, that in those tymes they did take oathes as a security for the people's enjoying justice under; and it is most certayn, since the conquest our kings have ever beene esteemed legall or limited monarchs. The Conqueror himselfe made such a declaration of his office as gave no content in France, so as they are said to have writ from thense unto him "quærentes si ita permanere deberent Francorum reges solo regio nomine contenti."[a] But what that Pipin and Charles his sonne were that are so said to have sent to our William is prety hard to guesse. His lawes speak as if they were "nondum reges," which implies they were afterwards. But it is certain no Pipin was ever king of France, but the father of Charles the Great, who put out Childerick the 21th, and was himselfe the 22. king, 751. Now whether Pipin, and Charles his sonn, aiming at the French crowne, and finding such a declaration of the royall office with us alowed by the Saxon kings as they could no wayes brooke, fearing the same might bee required of them by the French, which yet continewed inserted in our lawes, and so remained at the Conqueror's tyme, who still permitted it, that hee might not appeare to innovate ought; or that indeede some did really, in his tyme, except against such a declaration made by him, it matters little; it is sufficient to our purpose all writers have held the kings of England nothing so absolute as those of France, that it is no other then a limitted or mixed monarchy.

2. In what perticulars this king differs from an absolute monarch many men have severally writ. He that hath put out the "Treatis of Monarchy"[b] noteth five, and so many hath an other tract called

[a] Leg. Wmi. I. apud Hoved fol. 345 a.

[b] Page 38, edit. 1643, part ii. cap. 2.

"The Disclaimer,"[a] bot which differ from each other, and from Fortescue,[b] who yet pitches on the same number, viz. "1. Quod ipsi ad eorum libitum jura mutant. 2. Nova condunt. 3. Pœnas infligunt. 4. Onera imponunt. 5. Propriis arbitriis cum velint contendentium dirimunt lites." None of which the King of England can doe. And as indeed these are great rights and liberties which the English doe enjoy; so in my opinion they are not all so much the mixture or limitation of the monarch as the effects of his beeing restreyned. I should conceive therefore his limitation or mixture to consist rather—

1. That he is to governe his subjects by and according to those lawes which at his coronation he is sworne to observe.

2. That he cannot alone in any perticular alter any lawes already establisht, ether comon or statute.

3. That hee cannot alone make newe lawes.

4. That hee cannot alone, but in his courts of justice, by sworne judges, interpret those lawes,[c] whose office it is so to expound words as they may agree with equity, conscience, and to avoyd all wrong or pressure to others, and so to accord with the reason of the common law; which, though it allow many prerogatives to the king, yet none by which hee shall hurt any man.

5. That he cannot proceede against any subject, civilly or criminally, but in his ordinary courts of justice, and according to the knowne lawes of the land.

6. That his prærogatives are not numberlesse, but conteyne in themselves[d] matter of prescription.[e] None of which can bee a warrant for any employed by him to doe wrong or injury to any man, but hee must answer the party grieved in an ordinary court of justice, and bee punisht according to law.

3. Bodin,[f] in his "Chapter of Soveraignyty," sayes, the first marke of a soveraign prince is to give lawes in generall to all, and to every

[a] P. 18, 19, edit. 1643.
[b] Cap. xxxiv. fol. 78 b, 79 a.
[c] Plowden, fol. 487 a.
[d] Hutton's Argument against Ship-money, p. 26.
[e] Plowden, fol. 246 b, 247 a.
[f] De Repub. lib. i. cap. ii. p. 301.

one in perticuler, without the assent of any greater, equall, or lesse then himselfe. That if any bee obliged to make no lawes "sanz le consent des sujets, soit du senat ou du peuple, il ne est pas souveraign." And a litle after he sayes that under this all other marques are comprehended, "de sorte qu'à proprement parler on peut dire qu'il n'y a que ceste seule marque de soveraignite." I will not heere dispute in what sense hee takes this word "soveraigne" (I have said somewhat of that before[a]); but according to this rule it semes to mee the kings of England were at no tyme soveraigns.

4. In the yeare 1103, or rather, as I gather by Eadmerus,[b] 1100, Henry the First, falling into contestation with Paschalis the 2. touching some rights, writ unto him (as is to bee seene by the letter recorded in Brompton[c]) that by the help of God whilst he lived he would not diminish the dignities and customes of the kingdome, and adds, "Et si ego, quod absit, in tanta me dejectione ponerem, optimates mei, immo totius Angliæ populus id nullo modo pateretur," etc. Certainly heere the king was not so absolute a soveraigne but that both lords and commons had a power of restreyning the pope's incroachments if he should submit unto them.

5. Eadmerus notes certayn priviledges obteyned by some religious men from Rome,[d] not ratifyed "a rege et principibus," to bee invalid, which shewes the king did not alone make them good. And himselfe speaking of a desire the pope had to alter the lawes of the kingdom in the poynt of his sending a legate hither, the king told him,[e] "legationis illius stabilem auctoritatem non nisi per conniventiam episcoporum, abbatum et procerum, ac totius regni conventum, roborari posse constaret." That is, the king alone could not alter the law without the consent of the three estates, which wee now call the parliament. Accordingly Matheu Paris in expresse wordes affirmes,[f]

[a] Cap. 2. [b] P. 62, 26.

[c] P. 999, 20, 55. This letter was certainly writ before, for the answer to it is before 1103, those men went to Rome. Eadmer, p. 59, 48.

[d] P. 92, 40. [e] Eadmer, p. 138, 10. [f] Anno 1253, p. 1152, 3.

"Legis permutatio sine communi assensu barnagii constitui minime valet." By "barnagium" meaning the two houses of parliament, as I shall shew heereafter.

6. Gregory the 10.[a] "petiit a rege Edwardo 1. per literas annuum censum 1000 mercarum. Rex respondet se sine prælatis et proceribus regni non posse respondere; et quod jurejurando in coronatione sua fuit astrictus, quod jura regni sui servaret illibata, nec aliquid quod diadema tangat regni ejusdem absque ipsorum requisitus consilio faceret."

The 6 of Hen. 6.[b] the Lords doe affirme and subscribe that Henry the Fifth in his life ne might by his last will alter, change, or abrogue the law without the assent of the three estates, etc.

7. These reasons made Bracton and Fleta[c] write that the king is "sub Deo et lege," and again, "Rex habet superiorem Deum, item legem per quam factus est rex." And in another place, which also is remembred by Sir Ed. Cooke,[d] "Rex nihil aliud potest in terris cum sit Dei minister quam quod de jure potest," with many more of the like nature; but for the manner how he is "sub lege," whether only "ad directionem" or "ad correctionem" likewise, as some perhaps may infer, there will bee a fitter place to treat elsewhere.

8. This maxime, that the king cannot alone alter the law, etc. is (I conceave) the basis or grownd of all the liberty and franchise of the subject. Cicero[e] says well of law, that it is "fundamentum libertatis, fons æquitatis;" and a little after, "omnia commoda nostra, jura, libertatem, salutem legibus obtinemus, etc. Legum id circo omnes servi sumus, ut liberi esse possimus." And, as Sir Ed. Cooke observes,[f] in all places "leges figendi atque refigendi consuetudo est perniciosa," so for my part I cannot imagine how the subject can have any thing

[a] Rot. Claus. 3 Ed. I. memb. 9, in Schedula; et apud D. Ed. Cooke, Inst. iv. p. 13.

[b] Rot. Parl. 6 H. VI. n. 22. [c] Lib. i. cap. viii. n. 5, fol. 5b, f. 34a; Fleta, lib. i. cap 17, n. 9, p. 17.

[d] Lib. xi. fol. 74a; ex Bractono, lib. iii. c. 9 n. fol. 107.

[e] Pro Aul. Cluentio, n. 116 et 125, edit. Rob. Stephani. [f] Epist. lib. 4. Relat.

suer and lasting in any government where that power onely depends on the monarch's will.

I will not heere enter into dispute what law is. There are in Tulley, as I remember, in his booke "De Legibus," not lesse then nine definitions of it; some likewise in the Pandects,[a] in Gratian,[b] Alphonsus a Castro,[c] and others. I will not now argue in what they differ, nor which is the truest. It seemes to me Aquinas; as hee determines that for the best government comes neerest to what wee see establisht here, viz. "optima ordinatio principum est in aliqua civitate vel regno, in quo unus[d] præficitur secundum virtutem qui omnibus præsit. Et sub ipso sunt aliqui principantes[e] secundum virtutem, et tamen talis principatus ad omnes pertinet, tum quia ex omnibus eligi possunt, tum quia etiam ab omnibus eliguntur. Talis enim est optima politia bene commixta; ex regno in quantum unus præest; aristocratia in quantum multi principantur secundum virtutem; ex democratia[f] in quantum ex popularibus eligi possunt principes," etc. Now if you will restreyne this election onely to the house of commons in parliament, I doe not see but it is the description of this common-wealth; so his definition of law is most agreeing to the practis of it with us, viz. that it is "Rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet promulgata."[g] And indeede the statutes of England (not to speak of the common law,[h] which is no other then the common custome of the realme), as Fortescue,[i] and from him Sir Ed. Cooke, observe, are made with that circumspection and care they may bee well held "rationis ordinatio," and to bee framed "ad bonum commune," so many beeing to concur before it can bee binding, any of which have power of stopping but not of making a law.

[a] Ff. de Origine Juris, legi. 2, etc.
[b] Dist. 1 et 2.
[c] De Potestate Legis Pœnalis, lib. i. cap. 1, p. 5.
[d] The king.
[e] The lords.
[f] The commons.
[g] 1. 2. æ. q. 90, art. iv. Respondeo.
[h] 2 H. IV. Accion sur le case, 25.
[i] De Leg. cap. 18, fol. 39 b.; Cook, lib. xi. fol. 14 a. 63 a.

What waies the people of England have taken to preserve their lawes and liberties; and first of force.

CAP. 9.

1. To live with freedome in a regular way, a thing generally affected, hath beene very hard hitherto in any state to bee lighted upon: such as fixed on monarchy have beene much troubled how to find out a means to limit it. The Spartan tooke the way of Ephori, but they drewe so much to themselves as they left the prince little more then the beeing a nominal king, and were themselves no lesse burthensome to the people then an ille monarch, which was in the ende their ruine. The Athenians framed an aristocratie, but found those they trusted, to seeke their owne greatnesse, not the publick good; which bred so great an odium as made a generall combination against them, as it did not cease but with their expulsion, and fixing on their memories the scandalous names of the Thirty Tyrants of Athens.

2. The Romans came from monarchy to a republique or popular estate, yet how to settle that so as might give content to the inhabitant they could not sodainly pitch upon. The wisest no doubt saw that of Tullie "aut exigendi reges non fuerunt aut plebi re non verbo danda libertas;" [a] but how to doe that and yet reteyne the rules of government was not easy. Many essayes were made. The first and most effectual, and what is before remembred, [b] seemes to bee the provision to have none continewe long in any place of great concernment; but this could not give full satisfaction, for the consull during his tyme [c] had no lesse power then the former king; it was therefore thought fit to moderate him by erecting the office of tribunes,[d] not 16 yeares after the first creating them, which yet be-

[a] De Leg lib. iii. [b] Cap. 1, n. 25.
[c] Livi. lib. x. fol. 17 d. edit. Pauli Manut. Venet. 1555.
[d] Livi. lib. ii. fol. 25 d.

came so insupportable that Quintus tells Cicero it seemed to him "pestifera in seditione et ad seditionem nata;"[a] so hard it is to make any thing perfect.

3. The people of England have made sundry tryalls how they might preserve those rights were dwe unto them as free and yet subjects, alowed by the lawes of the land as their franchises and liberties.

In the yeare 1236, at the coronation of Henry the Third's queene, the lords mett at Westminster for perfourming those services were from them dwe at such solempnities by the auntient custome of the realme, at which tyme Math. Paris[b] remembers the earle of Chester carryed the sword of St. Edward, called "Curtein, in signum quod comes est palatii et regem si oberret habeat de jure potestatem cohibendi, suo sibi scilicet Cestrensi Constabulario ministrante et virga populum, cum se inordinate ingereret, subtrahente;" but this, how ever it may prove the kings not to have beene absolute, yet that the earles of Chester did at any tyme exercise that power I have not read, nor when nor how they had it confered upon them, and therefore I shall not insist upon it.

4. From the conquest till king John the kingdome was seldome free from civill warrs, so that lawes were lesse thought upon, yet the people ever called for, and were (as I may say) in pursuance of, their liberties, as by that I have beefore said may bee gathered.

At the first establishing of Magna Charta, 1215,[c] there was a clause for the election of 25 barons; to foure of which every one that had cause might complaine, who were to acquaint the king, or in his absence the cheif justice, with the wrong; and if within 40 dayes after the same were not redressed, then on complaint to the rest of the 25 they might rayse the commons of the land, seize on his majesties castles, lands, and otherwise molest him, yet without attempting any thing against the person of himself, his queene, or

[a] Cicero, de Legibus, lib. iii.

[b] P. 563, 11.

[c] Math. Paris.

children; and, what is more, the king gives every one leave to swear assistance to the said 25ty, and sends his letters to the sherife of each county to cause the people to doe accordingly; and, if wee beleive the copy Mathew Paris followed, assignes them 4 castles for their security. But I confesse I have seene an originall under king John's seale in which that was not, and likewise severall transcripts very ould that wanted this last clause of the castles.

5. To these perticulers it seemes to me Lewis of France in his letter to the abbot of St. Augustins 1216 had reference, when the wars had been beetweene the king and his barons, and the peace concluded beetweene them. He says "Inter cætera de ejus expresso consensu ita convenit, ut si idem Johannes ad flagitia prima rediret ipsi barones ab ejus fidelitate recederent nunquam ad eum post modum reversuri." [a] This was the first provision that ever this nation made more then the sacred oath of their prince for the observance of those rights they challenged; neither doe I find the king, though he were hard drawne to their requests in other perticulars, did ever stand upon this; either because the noble men were in those days so great he could not restreyne them, or that indeede they had legally a right of defending themselves by armes, as some passages allready remembred may seeme to inferr; which that from the Conqueror to Henry the Third, wee doe not find any great man to dye by the hand of justice for that crime, notwithstanding the so frequent intestine dissentions, may make the more probable.

6. Upon such a stypulation as this beetweene king and people there is no question (at least in my opinion) but it is lawful for subjects to oppose their prince not observing his paction; but if no such agreement bee exprest, whether they may then forceably resist is a question of very great difficulty. No man can renounce his naturall defence; and I doe hardly knowe any (not to mention Buchanan, Goodman, Knox, etc. who are held opposers of monarchy,) but propound some cases in which they permit the people the taking armes.

[a] Apud Gulielmum Thorn, col. 1869, 47.

Barclay,[a] though hee expressly writ "contra monarchomachos," yet propounds some in which hee can alow the subject that power. Nay, hee cites two cases for which hee will have it that a king "ipso facto ex rege non regem se facit," and that then, depriving himselfe of all principality, beeing no other then a private man, hee beecomes liable to punishment, and may suffer as any other should. The first, "Si regnum et rempublicam evertere conatur," etc.; the second, "Si rex in alicujus clientelam se contulerit, ac regnum, quod liberum a majoribus et populo traditum accepit, alienæ ditioni mancipaverit," so as hee sayes Baliol did Scotland to Edward the 1.; [and] might of king John, who resigned his crown to Inocentius Tertius, and made this, of a free kingdome, tributary to the sea of Rome; and elsewhere the same auctor[b] admitts the oppressed a great latitude in taking a defensive sword. Others[c] will graunt some other cases in which the lords and commons may joyne to oppose but not deprive the king of his crowne if the scepter bee inheritable; and that very book was not only perused and allowed by publick auctority, but the very passage I cite, not yet printed, was (as I have beene credibly informed) shewed to queen Elizabeth, and by her permitted to stand, with this asseverance, that when shee did so governe her subjects shee would not disalow it in them; yet I have of late seene that King Charles[d] speakes as if his father king James did alltogether disalow of Bilson for those opinions.

7. The full answer to those votes and declaration for no addresses to the king, printed by Richard Royston 1648, doth, if the king doe alienate his kingdome,[e] in that case onely, alow the subject to take up defensive armes; yet the learned and wise Grotius,[f] out of whom hee takes it, can more, as may bee seene lib. i. cap. 4. from the 7. to the 15. paragraph.

8. But these cases are few, and rarely happen, if ever; for who

[a] Lib. iii. cap. 8, in fine, p. 159. [b] Ibid. p. 159.
[c] Bilson, of Obedience, p. 520 et 521, ed. 1585.
[d] In his papers with Mr. Hinderson, n. 3, p. 38, pa. 3.
[e] P. 134. [f] De Jure Belli, lib. i. cap. 4. n. x.

can suppose a prince will goe about to alienate his kingdome to a stranger if not inforced on necessity, as king John; for the example of Baliol, suerly it did not passe as Barclay affirmes, for certayne Edward the 1. never exacted of him more then the kings of Scotland, Baliol's predecessors, had acknowledged as dwe to the crowne of England; as is to bee seene by many monuments [a] yet remayning in history and our records, which you may finde cyted by Mr. Selden in his notes upon the 13. chapter of Fortescue, p. 5, ad Fort. f. 32, 33; and where hee sayes that is onely founde in Englishe auctors, why are not they to bee credited, writing of the tymes they lived in, rather then the Scottish, borne, in comparison of them, but yesterday? No private man's evidence is worse for beeing ould, nor any lesse authentique for remayning in his custody whom it most concerned to provide for the safe keeping of it; and to blast the credit of a deede made soone after the conquest, or to say it was not then done (when it hath beene so frequently mentioned in all ages since), on the credit or rather conjectures of a writer in Henry the Eighth's tyme, I knowe not how justly it may bee. But to leave this and returne to the thing wee treat of. I say it can hardly bee thought any king can carry so hostile a minde against his kingdome that hee would utterly extirpate a senate or nation; and if any such monster shall bee, as is said of Caligula,[b] God will no doubt finde means to punish him; but the question is, whether his subjects may of their owne authority rise and by force resist him?

9. This is truly a matter of very great weight, yet considerable onely in poynt of conscience; for there is none peradventure but the vanquisht (bee his cause never so just) must pay the skore, neither shall any lawes or justice secure a man unlesse hee joine with the strongest. Obedience to just commands is a duty from inferiors; all that streynes is when the command's so tyrannicall as it is apparently an abuse of power, the destruction of those who ought to bee pre-

[a] Lib. Rubeus Scaccar. fol. 166 a; et apud Hoved. fol. 311, b. 43.

[b] Seneca, De Ira, lib. 3, cap. 19; Sueton. cap. 30.

served, that is, the ruine of the commanded. What is to bee done in that case is the question.

10. It seemes to me the people of England did in former tymes think they might defend their persons and goods against the king by armes, and not the meaner but the wiser sort had that opinion. 1233, when the differences grewe high betweene the Earle Marishall and Henry the Third, one fryer Agnellus, of the king's councell, come to invite the earle to a peace, told the opinion of the court to bee that it was for him[a] "debitum, utile, et tutum. Debet quia fecit injuriam domino suo, quia antequam rex invaderet terram aut personam mareschalli ipse invasit terram domini regis, combussit, destruxit et homines interfecit. Et si ille dicit, se hoc fecisse ad tuitionem corporis sui et hæreditatis suæ, dicunt quod non; quia in ipsius corpus aut exhæredationem non fuit unquam aliquid machinatum, nec ob hoc tamen deberet prorumpere contra dominum suum, donec oculata fide cognosceret regem contra ipsum talia cogitare; et ex tunc liceret," etc. And indeede that whole passage carries little else but an alowance of selfe defence had the king first invaded the earle, and is not alltogether unlike that the same auctor hath else where.[b] Henry the Third said that if hee by charter should give one a mannor which in truth beelonged to an other body, the right owner could not enter upon it until it were determined in his majesties courts, and he acquainted with it; in which opinion the Bishop of Salisbury did concur; and in my judgment, if wee doe not permit a liberty of resistance, most right and just; yet that writer affirmes the bishop in it did "suam vulnerare conscientiam;" adding, "quod si hoc staret, liceret regi cujuslibet dominium introire violenter, quacunque simulata occasione, et nisi verus dominus sufficeret tanti invasoris injurias propulsare, miserabiliter exhæredaretur." And Robert Grosseteste, the so famous bishop of Lincolne, is said to have injoined Mountford "in remissionem peccatorum, ut hanc causam (viz. his warring against Henry the 3.) pro qua certavit usque ad mortem sumeret, asserens

[a] Mat. Paris, p. 523, 25. [b] In Vitis Abbat. p. 143, 42.

pacem ecclesiæ Anglicanæ sine gladio materiali non posse firmari, et constanter affirmans omnes pro eo morientes martyrio coronari."—Apud Math. Paris, anno 1265, p. 1334, 27. Which was a strange approbation in such a clark of a warr so beegunn and prosecuted as that was, had it beene held altogether unlawfull in those tymes for the subject to have contested with his prince even with the sword.

11. It cannot bee denyed but in Mat. Paris wee often find him speake as if there only were a relative kind of duty from subject to prince, remembring with approbation that saying, "Quam diu habebis me pro senatore et ego te pro imperatore,"[a] and withall "Sicut subditus domino, ita dominus subdito tenetur;" intimating that if the prince did break his office, obedience did likewise cease on the subject's part. And it is very cleere the people of England were so far from accounting them who dyed in armes against their prince to have beene guilty of sinn for it, as they have beene hardly restrained from honouringe them as saints, thinking them to dye "pro justitia ecclesiæ et regni;" as may bee seene in the continewer of Math. Paris, anno 1265, p. 1334-35, and more by what the History of Melros writs, 1268, of the miracles after the death of Simon Mountford, earle of Lecester, slayne at Evesham warring against Edward, fighting to redeeme his father from him; and so of the earle of Lancaster. See Hen. Knighton, col. 2540, 8; 2541, 38.

But after ages, finding perhaps these wayes fitter to embroyle then secure a people, have laboured so to settle this nation that the king should have no powre to injure any, and every man a ready way to atteyn equall justice from him.

12. The places of the Newe Testament most urged doe not require a more generall obedience to princes then Coloss. iii. 20, 22, doth of children to parents, and servants to masters; yet none expounds those texts further then to such things as a master's or father's power extends unto. Math. xxii. 21. Christ bids the Pharisees render to Cesar the things were Cesar's, not whatsoever hee should

[a] Anno 1136, p. 100-8; Anno 1240, p. 724, 22.

aske, and was none of his. So, likwise, the xiii. of the Romans, the 3 and 4, sayes, plainly, rulers are not a terrour but to evill persons, being the minister of God for good, etc.; and 1 Tim. ii. 2, gives the reason, that wee may lead under them a godly and a quiet life. But if his commands bee so exorbitant as there is no possibilyty of living under him in godlynes and honesty, that hee become a terror to the good rather then the evill, so that indeede hee pervert the ende of magistracy, what in that case may the noblemen and commons, joyning together, doe? And if it bee an humane ordinance, as St. Peter calls him, how can his power bee other then according to man's establishment?

13. Mr. Hynderson,[a] on these and other motives, told king Charles hee never heard a reason why a defensive warr against unjust violence was unlawfull, so as armes are layd downe when the offencive war ceaseth, etc.; which his majestie doth alltogether deny upon any pretence whatsoever.[b] If one cleerely an usurper should so possesse himselfe of the crowne, and hold the kingdome some time in peace, as Harold, king Stephen, or Richard the Third did in England, or Hugh Capet in France, (if it bee trwe what Dantes and some other write, that hee was but the sonne of a butcher,) distributing all justice like former princes; if, such beeing generally received king, no man might styr against him, the true owner of the former line must either have his right extinguished, or it can be no offence in private men to joyne with him and labour his restitution even by force.

14. To speake my owne thoughts, I could never see any place of the New Testament (which is most insisted on) did, to my understanding, necessarily inferr defensive armes in subjects to be allwaies, upon all occasions, absolutely unlawfull; and, indeed, when I consider of it, I cannot apprehend how it can be otherwise; for if the manner of government, the qualification of it,[c] bee humane, (as I

[a] His second paper, n. 8, p. 34, [b] K. Charles, third paper, p. 44, n. 8.
[c] Doct. Ferne, Treat. of Conscience, sect. 3, p. 15.

think all affirme,) how shall wee drawe necessary consequences out of divinity for that structure, whose foundation is not otherwise divine then as it is setteled by man? I doe confesse, therefore, there are other arguments doe with me more disswade the taking armes in a well setteled commonwealth, bee it regall or popular, then anything in holy writ; as

15. First, I never yet read of any tooke them up who if they prospered did conteyn themselves within those bounds they at first held out; that is, the secret aime in all such warr is far other then what at the beginning they pretend unto; the open professions beeing ever the restoring justice to the oppressed people, but the secret, of those who cary on the designe, to rayse themselves by others' losse and ruine. The United Provinces, when they grewe into a defensive war with Spayn, professed onely a maintaining no other then their owne liberties, yet have since grown fully to substract themselves from that crowne.

When Lewis of France, 1216, came to succour the English, hee writ to the abbot of Sainct Augustine by Canterbury not to molest him, affirming his coming to bee "ad libertatem ecclesiæ et regni, ut vidz. tam regnum quam ecclesiam antiquæ et debitæ restituamus libertati,"[a] etc.; yet himselfe and 16 more did, at the same instant, take an oath,[b] that beeing victor, hee would extirpate all them in whose assistance hee came.

16. The spetious pretences that have excited common people to joyne in armes are ever religion, the violating of the publique liberty, the failing of justice; which, as they are the most faire pretexts imaginable, so have they beene the covers to the most damnable wickedness that ever was practised. When Jesabel had an intent of taking away both Naboth's life and vineyard,[c] shee wrot to the citty they should proclaime a fast; and Absolom,[d] intending that detest-

[a] Guliel. Thorn, anno 1216, col. 1870, 12. [b] Mat. Paris, p. 384, anno 1216.
[c] 1 Kings xxi. 9. [d] xv. 8, 4, 5, 6.

able treason against his father, stole the hearts of the commons by shewing his desire of doinge them justice. The hethen observed, for raysing people, "libertas et speciosa nomina prætexuntur, nec quisquam alienum servitium et dominationem sibi concupivit unquam, ut non eadem ista vocabula usurparet."

17. Yet did I never read of any nation atteyned that liberty they hoped for by armes, or that grwe to a greater sanctity of life by warr. I doe not deny but there are examples of some men who by the sword have exempted themselves from the power of a monarch, and have brought in a liberty of exercising what religion pleased them; but that the generality, especially the noblesse, have beecome lesse servile, either in person or purse, or to have atteyned a greater holinesse in manners and conversation, is what I have not observed. "Augetur religio Dei quanto magis premitur."[a] The poet could tell us, "Nulla fides pietasque viris qui castra sequuntur."[b] How can wee, then, imagine a thing so devine as religion can bee by that meanes advanced? God professing himselfe the God of peace, how shall contention forward his kingdome?

18. And from hence riseth a fourth doubt: popular styrs many times, if not most, sets up the worser sort of the people, the firsest, cruellest, fullest of fraude, "in turbas et discordias pessimo cuique plurima vis; pax et quies bonis artibus indigent."[c] Who can then think that lawfull in the undertaking which must bee prosecuted with so much violence, and some tymes at least by the worst men?

19. Now as it doth for the most rayse those whose fortunes and intentions are desperate, so it hath generally successe against such kings as are the best men; for a prince willing to reforme what is complained of, as Edw. the 2.[d] or Ric. the 2. or a pious soule, as Henry the 6. shall suffer by such designs, when William Rufus, who

[a] Lactant. Divin. Inst. lib. v. cap. 20. [b] Lucan. lib. x. vers. 407.

[c] Tacit. Hist. 4 initio, p. 607.

[d] Vide Chartam Ed. II. sub sigillo in Bibliotheca D. Simonds d' Ewes; et Rot. Parl. 10 et n. Ric. II.

is "ita liberalis quod prodigus, ita magnanimus quod superbus, ita severus quod sævus;" [a] or as Henry the 8th, that was accoumpted "domi terribilis, foris tyrannicus," etc. shall find no other effect of their subjects raysing armes but increasing their revenues by forfeitures, and making more severe lawes against civil commotions; when under the other princes, forrayners, laying hould on the opportunity, doe often beecome masters of the natives, as the story of this isle doth sufficiently witnesse; for what brought in the Romans, but that the Brittons did not "in commune consulere"? [b]

20. And they again leaving it, what again exposed this nation to the inundation of the Saxon, Dane, and Norman? but that not beeing really united, the king, either at difference with his subjects, or they amongst themselves, the weaker joyning with a stranger, hee in the ende became master of both parts. Neither hath this beene the fortune of the English only, but other places have tasted of the same dish. "Terram vestram," sayth Cerialis,[c] "cæterorumque Gallorum ingressi sunt duces imperatoresque Romani nulla cupiditate, sed majoribus vestris invocantibus, quos discordiæ usque ad exitium fatigabant. Et acciti auxilio Germani sociis pariter atque hostibus servitutem imposuerunt."

21. So then the reasons why people are not to take up armes against that government they live peaceably under, are not onely that they may not resist that ordinance God hath setteled, but beecause they may not in effect hurt themselves; for the cheife ende of all societyes beeing that every one may live in peace, enjoyinge equall justice, "Est enim corona regis facere justitiam et judicium, et tenere pacem, et sine quibus corona consistere non potest nec tenere;" and that not possibly to bee had where a discontented party, apt to bee deceived by colourable shewes and pretences, which cannot looke into the endes of those who guide them, have a liberty of by force resisting them under whom they live. States growne

[a] Mal[m]sb. fol. 69, a. 18.
[b] Tacit. in Vita Agricolæ, p. 720.
[c] Apud Tacit. Hist. 4, p. 658.

wise by experience have placed the power of managing the sword in very few, lest remayning in all, and so none without some part of it, the whole body might by severall factions bee destroyed; nothing beeing more detrimental to the publique then for privat persons to make use of that sword which Pliny reports Trajane alowed his officers to take up even against himselfe if he did ille.

22. These, and that I see David, having an intent to defend Keylah against his king,[a] though by God's expresse command hee had saved it from the Philistins, was not permitted; (for there is no question, if wee suppose he with his 600 men could not have forced the Keylites not to have delivered him to Saul, but that God, who told Laban[b] he was not to speak to Jacob good or bad, that turned Esaw and his 400 men from doeing him any hurt, could and would have made them serviceable to David, had the thing been what hee approved;) that as soone as ever hee had any strength, went out of Judea[c] (though designed by God next to succeed); came not in againe but by expresse command; avoyded Saul all was possible; would by noe means doe him any hurt because he was the Lord's anoynted, affirming that therefore his hand should not bee upon him.

23. And for that I take it altogether impossible for any civil warr, but if it bee not in the beginning yet it will in the sequele bee executed with violence and injustice, without any advantage to the generality; of which this kingdome had sad experience in the tyme of king John,[d] and after, 1258, when the parliament at Oxford enforced his sonne to remit the government to 24, wherof 12 were chosen by himselfe and 12 by the rest of the kingdome; the effect of which what was it, but some fewe enriching themselves by the revenwe of the crowne made the 24 fall at difference? Such whose ayme was the good of the commonwealth, finding no way to settle it but by restoring the king to his pristin state, were opposed onely by

[a] 1 Sam. xxiii. 2. [b] Gen. xxxi. 24; xxxii. 6; xxxiii. 6.
[c] 1 Sam. xxiv. 3, 5, 23, 25, 26; xxvi. 8, 9.
[d] See Mat. West. anno 1258, p. 277, 27; et anno 1265, p. 330, 27.

5, Leicester, Glocester, the bishop of Worcester, Hugh le Despencer, and Peter Montford, who, by colour of those provisions, had power to cary onne a long warr, "variis et equitatis et justiciæ fictionibus dealbatæ, intus autem plenæ versutiæ,"[a] to the destruction of the commons, and in fine their owne ruine. These considerations, and that I no way find the sword by God given to the people but the magistrate; that at the coronation of our kings it is with great solempnity first blest, then committed to his care,[b] "et cum ense totum regnum sibi commissum ad regendum fideliter, quod sciat sibi esse per verba pontificis commendatum." These doubts, I confesse, make me much question whether the subject can have any right (especially with us) of raysing armes against his prince; and as I will not absolutly condemne such as hold otherwise, "suo domino stent aut cadant," so I desire of God I nor mine may ever doe it, as what Sir Edward Cooke[c] wisely observes to bee a most poysonous bayt of the divill, bringing destruction to the offender, and that never attayneth the desired ende.

24. Whether the Magna Charta confirmed by Henry the 3. had that clause[d] formerly mentioned, of committing the care of the execution of it to 25 barons, I could never yet throughly informe myselfe. Mathewe Paris, anno 1225, speaks as if it had, for hee sayes "chartæ utrorumque regum in nullo inveniuntur dissimiles;" which wee must take "sensu communi non sensu mathematico," for it is not likly those nine yeares of trouble had carryed none of the first nomination away, yet wee read of no newe names inserted, nor that clause at all insisted upon, notwithstanding the frequent disputes betweene that king and his nobility till about 1248, when, by the provisions of Oxford, the publique affayres were remitted to the managing of 24, as I have touched; and after the battle of Lewis two earles and one

[a] Mat. West. anno 1265, p. 339, 30.

[b] Formula antiqua Coronationis Regiæ in Bibliotheca Cottoniana MSS. cujus exemplar habeo.

[c] Inst. iii. p. 36.

[d] Cap. 9, n. iv.

bishop were to bee chosen "ex parte communitatis," and they three to make choise of nine, of which 3 to bee allwaies with the king, and what his majesty did without their consent to bee invalid.

25. The charter is said yet to remayne under his seale, in which that king did declare, whenever hee infringed his great charter, "liceat omnibus de regno nostro contra nos insurgere et ad gravamen nostrum opem et operam dare, acsi nobis in nullo tenerentur."[a] But whether this were some part of the great charter, or a declaration and manyfestation of what was in it beefore establisht for law, I cannot say, having never met with the charter it selfe, though I have sought after it. In the yeare 1263, when the differences betweene him and his barons were referd to the arbitration of the French,[b] who determined in beehalfe of the king against the provisions of Oxford, "Hoc excepto, quod antiquæ chartæ regis Johannis Angliæ universitati concessæ, per illam sententiam in nullo intendebat penitus derogare;" which reservation left the matter as hee found it, for the barons urged those provisions were built upon that charter, in which yet there is nothing could countenance them, but only that clause wee speak of.

26. But to leave these perticulars till further search, it is certayne all these provisions of force never served for ought but to oppresse the commons, and perhaps inrich some private men; and that charter so much sought for, ever questioned, disputed, and made invalid, the generality receiving little benefit by it, till Hen. the 3. 1267,[c] in full peace confirmed it, and laying aside all violent wayes, committed to the care of his judges the seeing of it duly observed; since which it was never attempted to be impugned,[d] nor the validity of it called in question. Princes doe hardly observe what they yeild to upon inforcement. Protestant religion in France did not enjoy the quiet the edicts of former princes promised till after Hen. the 4. 1594, in great peace ratifyed them, since when, however there have beene warrs

[a] Danyel, anno 1258, p. 150.
[b] Math. Paris, 1263, p. 13, 25, 24.
[c] Stat. Marlbridg, 1267, cap. 5.
[d] Cook, Inst. ii. p. 102.

against some of that profession, yet rather (as indifferent men are of opinion) or by differences, then the religion it selfe.

27. But to that wee treat of: after this I never find the lords at all intermeddle with the sword for maynteynance of the lawes. I cannot deny but they have sometimes demanded of the king, and he inforced to assent to, those things, and to passe them after that manner, he hath layd hold on all oportunity of anulling them. Such were those orders set out by certayn commissioners nominated by his majesty on the desire of the lords 5^to^ Ed. 2. which were repealed 15° Ed. 2. if I mistake not, though some things in them were after made lawes by Ed. the 3. And that other, on the desire of the commons,[a] 10 Ric. 2. to endure only for one yeare, but noe addition of the sword for the making them good. The subject, now grown wise, did perceive that no way either to make the king willingly assent unto their desires, or themselves secure to receive the good of what hee did graunt: he that trusts to the strength of a steele cap may have his head as soone broken as he that wards the blowe; our auncestors, therefore, knowing it impossible to live without disputes beetween king and people, have of latter tymes avoyded the countenancing any decision by strength and power; that of Tully beeing most trwe, that "nihil exitiosius civitatibus, nihil tam contrarium juri et legibus, nihil minus civile et humanum, quam composita et constituta republica quidquam agi per vim."[b] And therefore now wee are to enquire what wayes, beesides that of prayers to God for the directing him, in whose handes the heartes of kings are, our auncestors have tooke for preserving their liberties.

[a] Rot. Parl. 10 Ric. II. n. 20; sed vide Comis. 21 Ric. II. n. 11.

[b] De Legib. lib. iii. fol. 192 b, et pro Cecinna.

What other courses the people of England have taken to preserve their liberties.

CAP. 10.

1. THERE is no greater ty amongst them that esteeme there is an omnipotent Deity, then an oath; neither can an inferior receive from a superior any higher assurance for the due observance of his word. The hethen defines it "affirmatio religiosa;" truly not ille, for what obligation can be more to a person of honour and honesty then to affirm, not onely beefore men but God, a reall intent of performing that hee promises? This, therefore, as it is the most sacred so is it the most auncient of any assurance the kings of England ever gave their people; and we may gather how much our predecessors esteemed it, in that our kings are not at all tyed to take an oath (unlesse they voluntary condiscend unto [it] to give their people satisfaction that way, as Richard the 2.[a] did, on the desire of the commons, in the xi year of his rayn); yet at his coronation, "il est tenwz,"[b] hee is obliged to assure them that he will keepe the lawes. What king did first take this oath with us, as Trajan[c] is said to have done in Rome, I doe not find. By the lawes of the Confessor[d] it is apparent he did take it, and, therefore, no tyme being set when it begun, and that it is manifest the Conqueror did it,[e] and was intreated "ut diadema regium sumeret sicut mos Anglici principatus exigit,"[f] alluding, no doubt, to his taking the crowne on the same conditions and ceremonyes former princes had done, I for my part cannot assigne it but as auntient as monarchy or royaltie itselfe in England, as practised by both Saxons and Normans.

[a] Rot. Parl. 11 Ric. II.

[b] Appel. in Par. 11 Ric. II. et apud Hen. Knighton, anno 1387; 11 Ric. II. col. 2715, 51.

[c] Plin. in Panegir. Trajani.

[d] Cap. xvi. servavit sacramentum fecit quod potuit, et cap. xvii. p. 141, p. 142.

[e] Flor. Wigor. anno 1066, p. 431, et Mal[m]s. de Pont. Ebor. lib. iii. fol. 154, b. 10.

[f] Ordericus Vitalis, p. 503 b.

2. The Romans permitted no magistrate to bee above five dayes without swearing to the lawe: "Magistratum plus quinque dies nisi qui jurasset in leges non licebat gerere."[a] And with us they did auntiently make a great hast to bee crowned, the name beeing rarely attributed unto them of kinge beefore they had given their people at their coronation assurance by oath to keepe the lawes of the kingdom. And it is observable that, as that did make him tyed[b] in conscience to the observance of them, that his people might have no cause to complain, so they on all occasions have ever remembred his majesty of his oath thus taken; using that as well for a defence or buckler for preserving them from oppression, as for his mayteyning the rights of the kingdome. As for example,

3. The 1 Ric. 2.[c] the commons desire the king would cause Magna Charta to bee observed, "eiant regard come le roy est charge a son coronement à tenir et garder le dite chartre et toutz ses poyntz." So 3° Ric. 2.[d] the king doth affirme hee will doe his subjects justice, notwithstanding the opposition the cleargy then made, "Come il soloit de faire en temps passe et est tenuz de fayre par vertu del serment fait a son coronement." I will not heere repeat the whole number in this kind the rolls of parliaments doe afforde; hee that will search them will often meete the like, as in Rot. Parl. "octaves purificat." 25 Ed. 3. n. 26, 47 Ed. 3. n. 14.

4. But it is so memorable that wee find Rot. Parl. the 40 Ed. 3. that, though it bee not alltogether pertinent to that wee treat of, yet, because it shewes how very much the kingdome held him obliged by it, may non unfitly bee heere remembred. Inocentius 6^{tus}, a Frenchman (and so passionate a lover of his nation that upon the many successes of Ed. the 3. there grue a proverbe, "Le pape est devenu Fransois et Jesu Anglois,"[e] etc.) in the yeare 1357 demanded all the arears of that tribute king John obliged himselfe to pay as feudatory to the church of Rome; but upon our Edward's[f] giving a flat

[a] Livy, lib. xxxi. in fine, fol. 304 g.
[b] Stat. Ed. III. 20 Ed. III. in prohem.
[c] Rot. Parl. Ric. II. n. 45.
[d] Rot. Parl. 3 Ric. II. n. 38.
[e] Hen. Knighton, anno 1357, col. 2615, 41.
[f] Ibid. col. 2617, 60.

denyall to yield any thing, that hee held his kingdome without subjection to any person, it rested, for ought I find, during that pope's tyme, which happened about 5 yeares after; when his successor and countryman, Urban the Fifth, not long after his election, as it seemes, began anewe, in so much as the king, 1366, acquainted his two howses of parliament the pope intended to proceede against him and his kingdome, in respect the said homage and fealty had not beene answeared according to the guift of king John, and did thereupon aske their advise.

5. Upon which the prelats, lords, and commons, declare the said king John, nor no other, could put their kingdome in such subjection without their owne assent. That if any such thing were done it was against his oath of coronation; and, further, the dukes, earls, and barons, with the commons, agree, if the pope shall by proces or otherwise seeke any way to constreyne the king or his subjects, they will resist him with all their power, laying as a grownd for their opposition that it was what, according to his oath, he could not doe; on which likwise his grandfather stood, as I have shewed, cap. 8. n. 6.

6. How he is obliged to doe his people justice by it, not only the whole body of the kingdome in parliament, but even private men, have tooke upon them to remember him. Henry the 3. beeing in great want, anno 1242,[a] caused the archbishop of York to demand of the Cistertians the value of one yeares wool, which they excused; whereupon he asked them, with an angry countenance, how in their necessitys they could seeke ought of the king, who in his wants gave him such a denyall? to whom one replyed, "Domine, recolimus quando consecrabatur in regem juravit se cuilibet justitiam exhibiturum; non petimus ab eo quicquam speciale; non potest nec debet illud nobis denegare quod juratum est generale."

7. And, though I can not approve that expostulation used by the countesse of Arundell to the same prince, as carrying more of womanish passion then a grave admonition fitting towards her sove-

[a] Mat. Paris, in fine An. p. 803, 10.

raigne, yet it fully proves the subject did relye upon his oath, as that by which hee was obliged to protect them from all injustice, and did not doubt to conjure him, by the remembrance of it, to let them enjoy it; he that will see examples in that kinde may read in the same auctor, p. 1131, 39; p. 1132, 18; p. 1134, 23; p. 1299, 47; p. 1138, 12; editionis Lond. 1571.

8. An other means for the atteyning equall right, that our ancestors found out, was, that as the execution of justice, which ought to be rendred indifferently to every man, was placed in severall courts of justice, so the judges in them were, upon fayling to doe justly, answerable as breakers of the king's oath, and punished accordingly; which is apparent by the judgment against Thorpe,[a] 24 and 25 Ed. 3; and what Mr. justice Crook[b] remembers in his argument against ship-mony. And this was the great wisdome of our auncestors; that princes beeing men, and by consequence subject to the affections of anger, malice, apt to violence, etc. the law did therefore appoynt those who were lesse interessed, and hoped in that respect to bee more equall, as persons not to receyve gaine by forfeytures, confiscations, etc., yet liable, upon fayling, to losse, disgrace, and ruine, to bee conservators of his oath, and distributers of his justice, without at all admitting the king (though hee should bee the chiefe justiciar[c]), in many cases,[d] to sit as judge.

9. And this seemes to me so wisely establisht that I am of opinion, set Westminster Hall right, that is, let the judges deale justly, uprightly, and honestly, it is not possible for the king of England to injure his people in any kind; and that they should doe soe there hath beene asmuch care taken as humane policy, by experience of former tymes, could reach unto, not leaving them at large, but tying them by most strict instructions, to doe equall right to rich and poore, without reguard of persons.

[a] Cook, Inst. iii. p. 145, p. 223. [b] P. 57.

[c] Bracton, lib. iii. de Actionibus, cap. ix. n. i. fol. 107 a.

[d] Bracton, lib. iii. de Corona, cap. 3, n. i. fol. 119 a; in fine. Fleta, lib. i. cap. 21, n. 11, p. 32; Stamford Plees, fol. 54 b, cap. 3, lib. ii.

10. Plutark[a] writes the Egiptian kings did swear their judges ὅτι κἂν βασιλεὺς τὶ προστάξῃ κρῖναι τῶν μὴ δικαίων, οὐ κρινοῦσι, that if the king commanded them to judge what was unjust they should not judge it; agreeing almost with Anastasius commanding them, "ut nullum rescriptum, nullam pragmaticam sanctionem, nullam sacram admonitionem quæ generali juri vel utilitati publicæ adversa esse videatur, in disceptationem cujuslibet litigii patiantur proferri."[b] No lesse care was heere taken; our predecessors exacting the king should not use any man otherwise then the law warranted,[c] but expresly providing[d] no commandement shall come eyther from the great or little seale to disturbe or delay common right; and, if such come, the justices not to leave doing justice in any poynt. Yet because this was not full enough, for the king or some other grandee might by word of mouth, or otherwise then by seale, divert the judges from right, therefore,[e] two yeares after, the king expressing his desire to maynteyn the laws and doe right to every one, did give a more full command to all judges whatsoever, "qe pur brief du gran seal ne lettre de la targe, ne autre lettre ou mandement quecunque, ne pur priere de nully, n'espargent ne lessent de faire droit a touz solon ley et la custume du royalme; et sur ce briefs soient mandez as ditz justices."

11. "Targer" is an old French word, signifying to stop or stay; so that "lettre de la targe" imports as much as a letter for stopping or delaying, in which sense it is likewise used Rot. Parl. apud Glocest. 2 Richard II. n. 63, "Jugement est souvent tariez et torges," etc.; so that in effect it is no more but a repetition of that part of the 29 chapter of Magna Charta, "Nulli vendemus, nulli negabimus, nulli differemus justitiam vel rectum." Truly, for my part, I doe not see how any thing can bee pen'd more generall or more strickt; yet beecause it did not worke the good effect was expected, or that

[a] In Apotheg. post Memnon de Regibus Ægipt.
[b] Cod. si contra jus, etc. Leg. ult. circa annum 500.
[c] Magna Charta, cap. 29. [d] 2 Ed. III. cap. 8.
[e] Rot. Parl. post fest. Kat. 4 Ed. III. n. 23.

the ordinary oath taken by the judges was not streight enough, a new one was devised, 18 Edw. 3. that they might as well have a sacramentall obligation to God, as the tye of a prince's precept. The whole is too long to bee heere repeated. Amongst others, they did swear to deny no man common right for the king's letters, or any other man's, nor for any other cause; and if any letters come contrary to law, to doe nothing upon them, but certify the king, and proceede to execute the law, notwithstanding those letters, etc.

12. Yet beecause bad men are more brought to doe right for feare then conscience, and some such might bee made judges, the conclusion was, that if they made default they were then to bee at the king's will of body, life, and goodes, etc. omitting that horrid imprecation added by Justinian, anno 535, "habeam partem cum Juda et lepra Giezi et tremore Cain," etc. contented with the last clause "insuper et pœnis quæ lege eorum contine[n]tur ero subjectus," etc. The like, for their avoyding all inclination to favour, either upon letters of great men or from the signet, may bee seene Rot. Parl. 21 Edw. 3. n. 18; 11 Ric. 2. n. 34; which cap. 10 in the print; 20 Ed. 3. cap. 1.

13. But beecause fear upon good grownds is a just excuse for the not observance of any humane precept whatsoever, and there had beene such tymes and such men as Mathew Paris speaks of, "contra quos justicia non audebant sententiare," etc., and beeing questioned, did plead they durst not doe otherwise for feare of death, it was establisht, 1 Hen. 4,[a] that neither the lords spirituall, temporall, nor the justices, should for the future bee admitted to the excuse "q'ils n'oseront faire ne dire la ley ne lour entent pour doute de mort, ou q'ils ne soyent libres de euxmesmes."

14. I doe not know that ever any kingdome did take more just and honorable waies for limiting monarchy then this, by tying the instruments it was to act by. It were tedious heere to repeat every fetter they were clogd with, nor to lay downe each direction they were to observe; in short, they were to bee guided by the lawes

[a] Rot. Parl. 1 H. IV. n. 97.

made for the government of the commonwealth; to deale plainly with the prince when he went against them; and to punish the transgressors with impartiality (yet using mercy);[a] to countenance no man in wronging another, the king having no prerogative to protect any in doing injury, of which all ages are full of examples, wherein severall of his graunts have beene made voyed, and such as have illegally put them in execution punisht; it beeing most just, "de facto," to hinder the injustice which under pretence of the prince's power an instrument of his would lay upon any particular, by bringing his actions to the tryall of law, and himselfe to condigne punishment, for doing what is not warrantable by it; in which regaurd we have ever said the king is "sub lege," every graunt of his carrying either tacitely or expressly this condition annexed to it, "Quod patria per donationem illam magis solito non gravetur seu oneretur."[b]

15. Kings are seldome bad, if there can bee means found they have no ille men about them; and therefore this commonwealth hath many tymes tooke the freedome to desire his majesty would remove such as they misliked.[c] It is memorable in that kind, the answer of Henry the 4. yet on record: the commons petition he would remove his confessor and 3 more out of his court; the king answers, hee knew nothing in speciall to charge them with, yet, beeing confident the lords and commons would not ordeyne what was not for the good of his kingdome, he gave command such as were present (one beeing absent), to avoyd his house. "Et dit mesme nostre seigneur le roy, qe semblablement il vorroit faire d'ascune autre q'est entour sa personne royale, s'il fuisse en hayne ou indignation de son people." Rot. Parl. 5 Hen. 4. n. 16.

16. As they have thus desired he would remove from him those they misliked, so have they sometymes that hee would place about him such as they might confide in. The 28 Henry the 3.[d] Mat.

[a] Jurament. Regis, vet. Magna Charta, fol. 164 a.

[b] Cook, lib. ii. Cause of Monopolis, fol. 86 b.

[c] Rot. Parl. 5 R. II. n. 18; 5 H. IV. n. 16; 11 H. IV. n. 17; 29 H. VI. n. 16.

[d] Anno 1244, p. 864, 47.

Paris remembers it was provided that, "De communi assensu quatuor eligantur potentes et nobiles de discretioribus totius regni, qui sint de consilio domini regis, et jurati quod negotia domini regis et regni fideliter tractabunt, et sine acceptione personarum omnibus justitiam exhibebunt, sequentur dominum regem, et si non omnes, semper duo eorum ad minus præsentes sint, ut audiant quærimonias singulorum," which I conceive was the first step to the statute of "Articuli super chartas,"[a] 28 Edw. I. when it was establisht the chancelor and judges of the king's bench should followe the court, that the king might have some learned in the law to dispatch such matters as came before him, who are therefore by Bracton[b] said to bee "a latere regis residentes."

17. But the attendance on his person, as full of inconvenience to the subject, was, at least in the tearm tyme, layd aside, ever since Edward 3.[c] It is true that prince, making sundry additions to the structure and firme setteling of this commonwealth, did first add proper seales to his courts of king's bench and common pleas;[d] and no doubt finding how vexatious it was to his people to have recourse to his justices, having no setteled abode, dispenced with their ordinary attendance in his court; whereas one of the royal properties[e] is to distribute equall justice to his subjects, which none can to all in his proper person, and therefore had that power in a great measure committed to judges, which, as Bracton[f] doth excellently describe, are to be "veros sapientes, timentes Deum, in quibus sit veritas eloquiorum et qui oderunt avaritiam;" and that they should bee such whom the king employed they did, before they entred upon execution of their place, take a solemne oath, which in effect was the same for one of them and a privy councelor, as may bee gathered by comparing Fleta, lib. i. cap. 17, n. 16, p. 18, with the old Magna Charta, fol. 165, a., beeing

[a] Cap. 5, 28 Ed. I.
[b] Lib. iii. De Actionibus, cap. 10, n. 2, fol. 108 a.
[c] Cook, Inst. iv. p. 73.
[d] Rot. Parl. 21 Ed. III. n. 45; 25 Ed. III. oct. Purif. n. 25.
[e] Fleta, lib. i. cap. 17, n. 1, 2, p. 16.
[f] De Actionibus, lib. iii. cap. 10, fol. 108 a.

i. To truly councell the king.

ii. To conceal his majesty's councells.

iii. To accuse none of ought said in counsell. Rot. Parl. 7 H. 4. n. 78.

iv. To preserve the rights of the king and crowne, yet without injuring any person.

v. To acquaint the king with concealment of things wrongfully aliened from the crowne.

vi. To add increas to the crowne, " en layall maniere."

vii. Not to bee of counsell with any where the crowne may bee diminisht of its due.

viii. To doe right to all men.

ix. In judgment to esteeme no person, high or low, etc.

x. To take no reward of any without the king's license, except eating and drinking, and that but for one day.

xi. That if by reason of combynation he cannot observe this oath he shall acquaint the king.

18. Who so observes the scope of this, the severall instructions given to the privy counsell and judges (for they went generally together as persons intrusted in the government of the state) by sundry parlyaments too long to bee heere repeated, may easily discerne a care taken to preserve the rights of monarchy; yet not to increas the power of it by oppression, but to carry them justly, soberly, and with discretion, so as the ordinary course of justice were not stopt, excepting onely in one perticular, " S'il ne soit tiele querele et encontre si grande persone q' home ne suppose aillours d'avoyr droit;"[a] which beeing ordeined on the desire of the commons, 1 Ri. 2,[b] was recommended unto them againe twise in Henry the 6. tyme. Sir Ed. Cook[c] hath collected such places in our records as shewes what their demeanor in this kingdome ought to bee; I have perused them, and whosoever shall weigh what instructions our forefathers gave them will conclude that " præsunt ut prosint."

[a] Rot. Parl. 2 H. VI. n. 16, art. 3; 8 H. VI. n. 27, art. 3.

[b] Rot. Parl. 1 Ric. II. n. 87.

[c] Inst. iv. cap. 2, p. 56.

19. But heere some may doubt (the king having many counsellors) to whom those rules were addressed: I conceive, to any what ever whose calling it was to give him counsell, but especyally to his privy councell and the judges, as I have beefore touched; but besides them, Sir Edward Cooke[a] sayes the king hath his parliament (called "Commune concilium regni,") and his "Magnum concilium," consisting of the lords in parlyament or out of parlyament; for proofe of which he voucheth a record of Henry the 4th's promising certayn lands in exchange to the earle of Northumberland, "per advice de son graund councel, et autres estates de son realme que le roy fera assembler," etc. I confesse I doe not take this graund councell heere, or the 37 Ed. 3. cap. 18, to be other then his privy councell, for the great trust reposed in them by the king and kingdome, styled not unfitly his graund councell, as those who had the greatest matters of weight committed to their cognizance; and, in my opinion, distinguished from the "autres estates;" and, if this graund councell bee the lords, this "autres estates" must bee the commons, a tytle seldome applyed unto them out of parlyament.

20. That the grand councell is often tymes no other then the privy councell is apparent in that sundry bills in parlyament are to bee heard "devant le grand councel,"[b] which were vayne, taking it onely for the lords out of parliament, who had all ready given their approbation of it, and therefore must of necessity bee some what differing from them, which was to give his majesties answer to it; it is likwise sometymes with this explanation, that it is his "grant et continuel councel."[c] The 5 Henry 4. the king, at the request of the commons, did nominate certayn lords, and others, viz. 6 bishops, one duke, the lord treasurer, privy seal, 4 barons, and 3 gentlemen, in all 22, "d'estre de son grant et continuel councel," which could bee no other then his privy councell. See Bundel Petit apud Winton, ante fest. Gregor. 4 Ed. 3. n. 73; Rot. Parl. 7 H. 4. n. 31, 84, 89, 106; 11 H. 4. n. 39.

[a] Inst. i. fol. 110 a. [b] Rot. Parl. 50 Ed. III. n. 140, 141, et passim ibid.
[c] Rot. Parl. 10 Ric. II. n. 20; 5 H. IV. n. 37.

21. If I should hold the great councell to bee any other body distinct from the privy councell, I should conceive it confined to no number or quality of persons whatsoever, but such as were upon some especiall occasion called by his majestie as assistants to him and his privy councell. Such I take that mentioned in a parliament 5 Henry 4.[a] which expresses that before Christmas last past it had pleased the king "d'envoyer pur certains seig[rs] espirituelx et temporelx, et pour plusiours gentilx et autres persones sufficieantz de son royalme, pur estre conseillez par eux," etc. touching the safeguard of the sea and the rebells in Wales, whose consultations were adjourned to this parlyament.

22. I have seene a letter in English from Hen. the 6. to the abbot of Bury, preserved in a leiger booke of that house, in [which] the king willeth him, "That for certaine great and chargeable matters touching the good and weale of us, our realms, lordships, and subjects, wee will and charge you streightly that yee bee with us, and our councell, at our pallace of Westminster, at the quindecem of Pasque next coming, to commune with us and them, and give good [counsell] in the matters abovesaid, etc. Yoeven under our privy seal, at our mannor of Sheene, the 2 of March. Directed,

"To our deere in God the Abbot of Bury."

I can not doubt but this was a convocating of some counselors to treat with his privy counsel, and perhaps may not unfitly bee thought his grand councell, though I doe not find that name attributed unto it; it sufficeth for my purpose that our kings have for the most had a sad and wise councell for their weighty affaires, and they following such directions as from tyme to tyme hath beene recommended by them, without exorbitantly extending their auctority, the subject hath seene his owne happynesse, and hath beene both willing and able to support extraordinary supplies, and ready to undergoe (knowing their condition not to bee mended) any danger they would

[a] Rot. Parl. 5 H. IV. n. 9; vide 27 Ed. III. cap. i. in prohem.; et Rot. Parl. n. 4; which was cleerely no parliament; vide 28 Ed. III.; Rot. Parl. 3 R. II. n. 40.

expose them to, God crowning their actions with successe both at home and abroad.

23. And as the prescribing them by whome the king did operate bounds or rules for their carryage, so when hee tooke such unto him who for just causes were not to bee trusted, the playn shewing him his error hath very much contributed to the people's good; and this, as it is a matter of great weight, so is it fit to bee performed by persons of greatest wisdome and gravity, after the discreetest manner, so as the king may take it least amiss, and his people receive most advantage by it; and therefore in elder tymes wee finde it frequently performed by bishops, as the many sad advises and admonitions of St. Gregory [a] to the emperor and princes of his tyme (to omitt many others) doe sufficiently witnesse, and with us certayn it is alltogether proper for them:

1. Because, beeing persons whose dependance ought to bee most on heaven, they have a great power in setteling and directing the conscience of kings, whose heart is in the hand of the Lord.[b]

2ly. Because they at his coronation are not onely witnesses of his taking an oath, but receive it from him as it were interposers or stypulators beetweene God and him for the due administration of justice; and therefore it is great reason, when hee doth otherwise, they should acquaint him how great his offence is.

24. Neither is our kingdome without examples in this kind. Hen. the 3. did so favor the bishop of Winchester and his sonne, by whose counsel he was guided, that the other bishops saw the ruine hung over the commonwealth, and therefore, 1234,[c] "Edmund Cantuariensis electus cum multis episcopis suffraganeis, qui omnes regis et regni desolationi condolentes venerunt ad regem, et quasi uno corde, animo et ore dixerunt: Domine rex, dicimus vobis in Domino, ut fideles vestri, quod consilium quod nunc habetis et quo utimini non est sanum nec securum, sed crudele et periculosum vobis et regno Angliæ; Petri videlicet Wintoniensi[s] episcopi et Petri de Rivallis et complicium

[a] Lib. ii. epist. 61; Indic. ii. lib. v. epist. 6; lib. vii. epist. 120.

[b] Proverb. xxi. 1.

[c] Mat. Paris, 1234, p. 529, 34.

suorum;" and then gave him ten so just causes of exception against both, as hee soone after removed them from him.[a]

Such likwise was that petition[b] of theirs in Parlyament, 1 Rich. 2. which "supplient les prelatz et clergie que plese a nostr seigneur le roy prendre et retenir a sa presence, ses conseils, et ses services prodeshomes vaillantz, scachanz, esprovez, et nient covetous, et si sagement et resonablement modifier si bien le nombre de ses familiers, come les despences cotidiens de son houstiel, qe per tant l'eglise d'Engleterre, mesme nostre seigneur le roy, ses liges, et tout son royalme, soyent per meyndres subsides, et autres charges extraordinaires des ses liges le plus justement, seintement, profitablement et a greindre eise de luy et de son people reulez et governez, et qe per tant lour estat soit en Dieu et en felicite le mieltz gardez et entrenez;" by which wee may see no forrayn dependance made in those tyms the clergy forget the duty they ought to their owne country.

25. But if our bishops did so far neglect what was fit for them to doe, as either out of feare not to bee willing to speak to the king so freely as the necessity required, nor alone to beare the burthen of his displeasure, that he might not bee without knowing the griefs of his people, and they represented unto him in a sober and orderly way, as from the whole body of them, the subject hath had recours to the councell of the three states, called in former tymes "commune concilium baronum, commune concilium regni," etc. by us now a parlyament, by the Germans a dyat, by the French "le councel de trois estates;" of which, beecause it hath a great part in the constitution of this commonwealth, is a great preserver of the liberty of the subject, as that without which all impositions laid upon them are illegall, nothing newe is law if not confirmed by it, it will be necessary to speake somewhat more perticularly; and first of the antiquity of it.

[a] Mat. Paris, 1234, p. 531, 20.

[b] Petitions de Clergie, Rot. Parl. 1 Ric. II. n. 112, Pet. 1.

Of the introducing parlyaments into this kingdome.

CAP. 11.

1. I CONCEIVE parlyaments brought hither from Germany, and so as old as the name of England hath belonged to this nation. That the Germans had it, their dyats doe at this day shew, which have little alteration from what was in Tacitus[a] his tyme, when "de minoribus rebus principes consultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est apud principes pertractentur;" which beeing in substance the same is held in such assemblies by them and us, I see no reason why wee should assigne other beegining to either then the auntient custome of the Germans brought hether by the Saxons.

2. Of which yet wee find no memory amongst them till after Augustine's coming, and his converting of them to Christyanity, beefore which little of their doings is remembred, other then that they were busied in expelling the Brittons, or so laboured with civill dissentions it gave them small leisure to settle the island in peace. But after Ethelbert had received Christian religion, 597, he began to governe his people by lawes, [which] as Beda[b] tells us, "cum consilio sapientum constituit;" after which, when wee read our auncestors did in "commune consulere," wee may not unfitly think those meetings were to them what to us a parlyament is. Alured[c] saith, in the preface to his Lawes, "Ubi propagato Dei Evangelio, plurime nationes atque adeo Angli verbo Dei fidem adjunxerunt, nonnulli per orbem terrarum cætus, atque in Anglia episcoporum aliorumque clarissimorum sapientum conventus agebantur, atque hii divina edocti miseratione cuique jam primum peccanti pœnam imperabant pecuniariam, ejusque exigendæ munus magistratibus deferebant."

[a] De Morib. German. p. 693. [b] Beda, lib. ii. cap. 5.
[c] Leg. Saxon. edit. Cant. p. 21, et apud Jorval. col. 819, 51.

3. It is not probable these were meerely ecclesiastique synods, beecause they did "imperare pœnas pecuniarias," to bee levyed by the magistrate; all the question is, of whom those "cætus" or "conventus" did consist, who those "clarissimi sapientes" were that made those lawes. Some will graunt the bishops and the greater nobilyty, or, as wee now say, the lords, did concur in making them, but that none of the commons were ever called to these councells till the 49 of Hen. the 3. And a late writer conceives the foundation of the house of commons to bee after the statute "de tallagio non concedendo," which hee will have to bee 34 Ed. 1. For, saith hee,[a] it is obvious, (if not the principall) one cheife ende of calling parlyaments was to rayse money for the publique affaires; so that after the aforesaid statute of 34 Ed. 1. it had beene to little purpose to call a parliament of prelats and peeres, and not to summon the commons.

4. For my part I take nothing of this to be true; I conceive that statute not to have beene made 34 Ed. 1. but to have past as an unquestionable act the 28 Ed. 1. as an appendix[b] to Magna Charta, when that prince confirmed his father's charter. 2ly. I take this law to be no other but an explanation of that clause in king John's and Henry the Third's (which differd nothing from it), "ad habendum commune concilium regni de auxiliis assidendis,"[c] etc. which is therefore wholly omitted in this. 3ly. I hould it undoubted the house of commons was a body seperated from the lords[d] beefore 34 Ed. 1. Lastly, I have read the writ which calls them, but never met with any word either in it or any statute that expresses the ende why they came to have been principally for giving money. I confesse that to have beene what the commons did usually first take into their consideration; and with great reason, for as the king did for the most cause it to bee declared unto them, one ende of his assembling that

[a] Royalist Defence, p. 8.

[b] Vide Walsingham, anno 1300, p. 44, 10; et anno 1298, p. 40, 21, p. 41, 2; Knighton, col. 2523, 2524, 2525, 2528, 68.

[c] Mat. Paris, anno 1215, p. 343, 41.

[d] Mat. West, anno 1297, p. 410, 13.

court was his people might receive justice and bee freed from oppression, soe their first care was (and very fitly) to supply his wants, that hee might be enabled to maynteyn them, and support, without other pressure, the necessary charges of the commonwealth,[a] which they well knew must bee raysed from them.

5. If any expect to find in the Saxon tymes such formall houses of parliament as are now, certainly he will be deceived. During the eptarchy the whole kingdome could not bee called into one place; perhaps the elections of the commons were not fully regulated till Henry the 6th.[b] The county palatine of Chester had neither knight nor burgesse to represent them in the English parliament till to Henry Eight, as the bishoprick of Durham hath not yet. It is not improbable but they might, under the earles of Chester,[c] within themselves, have some court of the same nature, and so for Duresme, Wales, etc.

6. But I conceive it enough to prove the Saxons beeginers of parlyments, or at least that they were in their tyme, if it can bee shewn in the councells held by them, the bishops, noblemen (whether called ealdermen, thanes, graves, lords, or by what other name soever), and commons, were present in those consultations; though perhaps there neither was a formall calling by writ, nor of sending burgesses for towns or knights for shires, till after the conquest, of which yet I will neither affirme nor deny any thing; nor perhaps so exact a beegining and proceeding by the king's presence, or some that represented him, as is now and hath of long tyme beene accustomed.[d] Where ever therefore we find the people said to have joyned in any action with the king and nobility in councell, I cannot but think that an assembly of the three estates, which wee call a parlyment; for, it beeing impossible the great body of the commons could come toogether but by their representees, and finding they did assent to

[a] Rot. Parl. 2 H. IV. n. 115.
[b] 23 H. VI. cap. 15.
[c] See Mr. Selden his Tytles of Honor, in fol. pag. 640.
[d] H. Knighton, col. 2525. 4 anno.

matters of weight, wee cannot conclude they did it otherwise then by their deputies.

7. Now for the bishops, principes, magnates, or proceres; there will bee little question, and to me there is no doubt, but the commons are under those names comprehended, as wee yet say "The lords of his majesties privy councell made such an order," when perhaps the greatest part were knights or gentlemen, the meaner beeing included in the name of the more noble, or else that they did account them proceres which were employed in soe great an action as making lawes for binding so many more then themselves. Neither that famous guift of Ethewolfus, 855, so celebrated by all hystorians, which settled the tenth on the church "cum consilio episcoporum et principum,"[a] nor those severall ones in the Saxon and Danes tymes which enjoyned the payment of them, cary any shew of beeing made by other then the king, bishops, proceres, or magnates, yet our auncestors did conceive the people to have concurd in the establishing of them; for the lawes of the Confessor assure they were "concessa a rege, baronibus, et populo."[b]

8. Ina sayes he made his lawes by the councel of Cenred his father, two bishops, ȝ mid ealium minum ealdormannum ȝ yldestan witan minre þeode; which an ould writer translates "omnium aldermannorum meorum et seniorum et sapientum regni mei," etc. Here is nothing expressed of the commons, yet after ages agree they gave their consents unto it, "Ita constituit optimus Ina rex Anglorum," etc.;[c] and a little after, "hoc factum fuit per commune consilium et assensum omnium episcoporum et principum, procerum, comitum et omnium sapientum, seniorum et populorum totius regni, et per præceptum regis Inæ prædicti."

9. Anno 1017, Canutus the Dane, the received king of England, made a league or agreement "cum principibus et omni populo."[b] How

[a] Mal[m]s. fol. 22, 36, a; Ingulf. fol. 491 a.

[b] Cap. viii. p. 139, et apud Hoved. fol. 343, b. 50.

[c] Leg. Ed. Confes. p. 148.

[d] Flor. Wigorn. p. 390.

could this be other then in a parlyament? Certainly Jorvalensis [a] held it one, "post hæc rex scil. Canutus apud Oxoniam parliamentum tenuit, ubi Angli simul et Dani de legibus Edgari regis observandis concordes facti sunt;" which name hee gives elsewhere to other of those great assemblies.[b]

10. Anno 1048,[c] the king of Denmarke demanded of king Edward the lone of some shipps, "sed licet comes Godwinus voluisset ut saltem 50 naves illi mitterentur, Leofricus comes omnisque populus uno ore contradixerunt." For my part I doe not see how the people could meete the lords with a power of contradicting such a demand of a strange prince but in parlyament; and, though there bee no question but the county court and turne are derived from that ꝑcıꝑgemoꝺ in the Saxon lawes,[d] yet I cannot but think that generall or plenum [e] ꝑolcmoꝺe, that mæꝛge on ꝑolcgemoꝺe [f] mentioned by Æthelstan, that met once a yeare, composed of bishops, ealdermen, or as wee now call them lords, and ꝑolc or commons, that laboured to settle the generall peace of the kingdome; or wherin, as king Edward, "omnes principes et comites et similiter omnes proceres regni et milites et liberi homines" did "providere indemnitatibus coronæ regni per commune consilium, et ad insolentiam malefactorum reprimendum, ad utilitatem regni;" this I cannot take but to bee the same after ages called a parlyament.

11. To come somewhat lower: Henry the First affirms his father did amend his lawes "consilio baronum suorum." [g] Hoveden [h] relates the manner of doeing it; and where he saith "precatui baronum tandem acquievit," the MSS. auctor of the Chronicle of Lichfield,[i] affirms it to have been done "ad pre[cem] communitatis Anglorum;" which denotes the "commons" past in Hoveden under the notion of "baronum."

[a] Jorval. col. 908, 36.
[b] Jorval. col. 866, 50.
[c] Flor. Wigorn p. 407.
[d] Leg. Edgar. cap. v. p. 64; Canuti, cap. xvii. p. 111.
[e] Leg. Ed. cap. xxxv. p. 146.
[f] Cap. i. p. 54, et p. 53.
[g] Leg. H. I. cap. ii. p. 176, 33.
[h] Fol. 347, a. 10.
[i] Selden apud Eadmer. p. 171, 18.

In the great councell held at Rockingham, there met "ex regia sanctione totius regni nobilitas;" [a] yet it is playn the commons were in it, for Anselme [b] spake "in medio procerum et conglobatæ multitudinis," and "Miles unus de multitudine prodiens," [c] etc.

1100, at the coronation of Hen. the First, there was gathered together "clerus Angliæ et populus universus," [d] and himself affirmes he was crowned "communi assensu baronum regni Angliæ;" [e] which Mat. Paris [f] interprets, to have beene "communi consilio gentis Anglorum."

12. Upon some difference beetweene that prince and Anselme, he, about 1101, sent to Paschalis the 2. at Rome, promising the same obedience his auncestors had yeilded to that sea, yet on the termes he might enjoy those rights and customes his auncestors did, and concludes, "Notumque habeat sanctitas vestra quod, me vivente, (Deo auxiliante) dignitates et usus regni Angliæ non minuentur, et si ego, quod absit, in tanta me dejectione ponerem, optimates mei, immo totius Angliæ populus id nullo modo pateretur." [g] What can this bee other then that the parlyament would not suffer any diminution of the rights of the crowne, though the king himselfe should?

13. Calixtus the 2. 1221, sent a legat into England (which was much wonderd at, because the popes send none hither but on the king's desire), who being brought to him, then upon an expedition against the Welsh, his majestie told him he was not then at leisure to give answer to so weighty a buisinesse, "cum legationis illius stabilem auctoritatem non nisi per conniventiam episcoporum, abbatum, et procerum ac totius regni conventum roborari posse constaret," [h] etc. I confesse I doe not see how this can bee understood otherwise then that his buisinesse was of that nature it did require the assent of the clergy, "episcoporum, abbatum," of the noblemen, "et procerum," and of the commons, "totius regni conventum," that

[a] Eadmerus, p. 26, 10.
[b] P. 27, 22.
[c] P. 29, 27.
[d] Mat. Paris, p. 74, 10.
[e] Leg. H. I. cap. 1. p. 175, 34.
[f] P. 76, 8.
[g] Jorval. col. 999.
[h] Eadmerus, lib. vi. p. 138, 10.

is, of three estates, what wee now call the parlyament, which the king was not then at leisure to assemble.

14. By this may bee seene how much Pol. Virgill,[a] and such as follow him, doe erre in affirming our kings did so rarely consult with their subjects before they were called, 1116, to Salisbury, "ut ab Henrico 1° id institutum jure manasse dici possit," etc. Certainly hee did not beegin parliaments, which were then and long after knowne by the name of "commune concilium baronum," "baro" then denoting a person of freer condition then the ordinary, and out of that respect attributed to the citizens of London, "quos propter civitatis dignitatem et civium antiquam libertatem barones consuevimus appellare;"[b] and, after speaking of a means (establisht under Edward the 1.)[c] thought upon for securing passsingers from theeves, he sayes[d] it was delayed especially for that "tanta legis permutatio sine communi assensu barnagii constitui minime valuisset," etc.; and with him nothing is more common to signify the parlyament then "universitatis barnagium,"[e] "universitas barnagii,"[f] "universitas Angliæ,"[g] and "proceres regni." Anno 1232, "Convenerunt (says he[h]) ad colloquium prælati cum proceribus regni, ubi concessa est regi quadragesima pars rerum mobilium ab episcopis, abbatibus, prioribus, clericis et laicis," who might not conclude none of the lay to have charged the kingdome [with] this imposition, but onely the "proceres regni" thus mentioned to have been assembled; yet it is cleere by the writ for collecting of it, which is a little after, not onely the earls and barons, but the "milites, liberi homines, villani," the knights, cittizens (called, I conceive, "liberi homines" beecause they had some enfranchisement by charter from the king), and burgesses, joyned in the guifte.

15. Now under this tytle of "Angliæ" or "regni universitas," though the writers of those tymes doe comprehend the whole body

[a] Lib. xi. p. 188, 10, ubi agit de parliamento.
[b] Mat. Paris, anno 1253, p. 1151, 9.
[c] 13 Ed. I. cap. ii. anno 1285.
[d] Mat. Paris, anno 1253, p. 1152, 3.
[e] Anno 1258, p. 993, 39.
[f] Anno 1258, p. 1308, 26.
[g] Anno 1258, p. 1306, 42.
[h] P. 505, 8.

of the common-wealth, lords and commons, yet when they will speak cleerely and significantly it is playn they intend onely the commons by that phrase. There was, anno 1245, an elegant epistle,[a] "composita per regni universitatem," to bee presented to the councell at Lions, concerning exactions in England. The letter itselfe is thus directed in Mathew Paris,[b] "Magnates et universitas regni Angliæ," or, as some copies have it,[c] "Comites, barones, milites et universitas barnagii regni Angliæ;" that is, according to our now dialect, the lords and commons sent it, which likewise the act itselfe in conclusion shewes.[d]

16. By this wee see it cannot bee concluded the commons were not parties to what past in those great assemblies beecause some tymes the lords are onely remembred to have met. I shall, for close of this dispute, add what wee find in two parliaments, the first 51 Ed. 3. "Qe de co'e droit du royalme, de chescun contee d'Engleterre sont et serront eslus deux persones d'estre a parlement, pur la commune des dites contees forspris, cites et burges, qe devront eslire d'eaux mesmes qui devront respondre pur eux," etc.; and in an other of Henry the 5. which punctually affirmes, "The comminalte of this land is and ever hath beene a member of parliament."[e] Now if common right bee common law,[f] and that, no other then the perfection of reason,[g] beecame by experience[h] the common custome of the realme, and the sending knights and burgesses to parliament bee by common right, and no custome can beegin since 1 R. 1. and they have ever beene a member of parliament, it must of necessity follow the sending knights and burgesses thither was before that king's tyme.

17. If wee credit the "Modus tenendi parliamentum," said to have beene shewed the Conqueror, there can bee no question of the

[a] Mat. Paris, p. 890, 35.
[b] P. 901, 48.
[c] Cujus unum exemplar optimæ notæ et fidei vide in Bibliotheca Samuelis Roper hospitii Lincoln. fol. 116 b.
[d] Mat. Paris, p. 904.
[e] Rot. Parl. at Lecest. 2 H. V. pet. 10.
[f] Cook, Inst. i. fol. 142 a.
[g] Inst. ii. p. 161.
[h] Fitz. Action sur le case, 25.

commons beeing members in parliament; but I confesse that treatis hath beene ever suspected by me; and for nothing more then the frequent use of the word parlyament, which I doe not find common in our English writers [beefore] Henry the Third's tyme. It is probable after that [a] a clause in king John's Magna Charta, 1215,[b] which I mentioned before, "Nullum scutagium vel auxilium ponam in regno nostro nisi per commune concilium regni nostri," etc. this court might bee more frequent then formerly, by reason of the necessities the crowne had to bee supplyed by it; but neither doth that charter speak of it otherwise then of a court in use before, nor indeede doth it consist of other then the auntient customes of the kingdome extracted out of the lawes of king Edward and Henry the 1.[c]

18. But for that other opinion, that the lords and commons did sometime sit and vote together, I must needes say I never met with any thing to make me think so. Learned men [d] affirme it, and may have seene what I have not met with. And so I leave it to further search.

Who are the three estates of this kingdome which assemble in parliament.

CAP. 12.

1. For my owne perticular, I did never question but the king, as he was "principium et fines parliamenti,"[e] the beginner and ender of parliaments, the governor and director of them, so the three estates were those who were governed by him, vidz. 1. The lords spirituall. 2. The lords temporall. 3. The commons. But of late I have

[a] Apud Mat. Paris, p. 343, 33.
[b] Num. 4.
[c] Mat. Paris, anno 1215, p. 339, 35, 48.
[d] Cook, Inst. ii. p. 267 ; Inst. iv. p. 255.
[e] Modus tenendi Parliament.

met with some that hold the king himselfe to bee one of three, and both the lords spirituall and temporall but one, not two estats. And, though it seeme to me, even in the nature of the thing it selfe, a forced construction to take a single man, as the king is, for "ordo hominum," an estate of men, yet I have found that have stiffely mainteyned it. What is the opinion of these daies I conceive not greatly materiall for such as seek the basis or foundation on which this commonwealth is built, but how former tymes before the dispute came did interpret it; and in their memorialls I could never observe any passage sounding at all that way, but that they mentioned ever the prince as a person distinct from the three estates.

2. It will bee heere therefore onely necessary to repeat such places as remember them and him together, and marke after what manner it is done; and so every reader may best satisfy himselfe. Richard the 2.[a] tells the parliament hee had summoned them to settle the kingdome "ovek l'eyde de Dieu et par bon conseil des estats de son royalme." The king that dead is (vizt. Henry the 5.[b]) might not alter, change, or abrogue the lawe of the land, without th'assent of [the] three estates.

1 Hen. 6.[c] "Le roy a observer jura (scil. Hen. 5.) come les troys estats del dit royalme."

39 Hen. 6.[d] "After the agreement of the said act of record by the king and three estates in this present parliament."

In all which the king is cleerly distinguished from the three estates. Indeede the act 9 H. 5.[e] to which that 1 H. 6. had reference, doth not onely affirme the three estates to differ from the king, but declares who they were to whom the peace and articles of the same betweene England and France were shewed, videlicet, "prelatos et clerum, nobiles et magnates, nec non communitates regni sui," which they, by the command of the king, "velud tres status dicti

[a] Rot. Parl. 20 Ri. II. n. 1.
[b] Rot. Parl. 6 H. VI. n. 29.
[c] Rot. Parl. 1 H. VI. n. 40.
[d] 39 H. VI. n. 29.
[e] 9 H. V. Rot. Parl. 2 Maii. Approbatio pacis inter regna Angl. et Franciæ nuper conclusæ.

regni sui approbarunt," etc. Certainly in so solemne an action as this wee cannot think any thing past but maturely digested.

3. The Parliament Roll 1 R. 3. (of which before) carries a petition presented unto him, "In the name of the three estates of the realme of England, to wit, the lords spirituall and temporall and other nobles and persons of the commons," and a while after (I use the wordes of the record), "Therefore at the request and by the assent of the three estates of this realme (that is to say), the lords spirituall and temporall and commons of this land assembled in this present parliament, and by auctority of the same, bee it," etc.

So likewise in the printed statutes 1 Eliz. cap. 3. at the beegining, "Wee your most humble, faithfull, and obedient subjects, the lords spirituall and temporall;" and a little after, representing the three estates of the realme of England, 8 Eliz. cap. 1, "The state of the clergy, one of the greatest states of this realm." Agreeing with all which records is the opinion of Sir Ed. Cook, Inst. iv. cap. 1. page 1. See likewise Inst. ii. 585, "De Asportatis Religiosorum."

4. These three estates, summoned by the king's writ, meeting in their severall houses, and both joyned with the king, make that court wee now call the parliament; and though some tymes in common speach wee call the two houses the parliament,[a] yet properly it can not bee so taken, and I doe well remember in these late differences, in certain articles presented to his majesty for a cessation, the two houses used this expression,[b] "The armies raysed by the parliament." At which his majesty excepted, as beeing that which did inferr either himselfe to bee no part of the parliament, or himselfe to have raysed that army; which was therefore, the 29 March, 1643, allowed to bee thus alterd, "The army raysed by both howses of parliament."

5. The lawyers[c] say this is a court of great honor and justice, of

[a] Inst. iv. cap. 1, p. 1; Dyer, fol. 59 b.

[b] Collection of Orders, etc. p. 56, 1; p. 59, 3; p. 61.

[c] Plowd. Com. fol. 398 b.; Cook, lib. xi. fol. 14 a.

which no man ought to think dishonorably. It is the supream court of judicature of the realme, and rightly so esteemed; for, as we can not suppose a supremacy of right judging can be placed where wee can not possibly imagine a supreamacy of knowledg, so in this assembly there cannot but bee as much wisdome conceived to bee gathered together as England can afford; for first, there is the king and privy councell for matters of state; 2dly, his judges (by whose advise he ever proceeds in busines of weight moved in parlyament);[a] 3dly, the lay lords, for matters of military and civill government; 4thly, the bishops, skild in divine, civell, and canon lawes; 5thly, there are the commons, who feele and are to represent the griefs of the people, chosen out of the wisest of themselves; and therefore Sir Edward Cooke well sayes that, when they are thus joyned there, "ultimum sapientiæ."

6. All these three must concurr to the passing any thing burthensome to the subject; either house, or the king, having a power to stopp whatsoever is brought unto them. And it is to what is so generally concluded on by all, to which we submit; for, as there is no man resigns his judgment but [in] obedience to the parliament, so doth he not that to the knights of the shire or burgesses of the towne by whome he is represented, nor to that howse whereof they are members, but to them joyning with the king and lords; all which constitute that court, whereof no man ought to think dishonorably.

7. It can not bee denyed, but for all this care taken by our auncestors in modeling this body, there have beene, now and then, some great excesses parliaments have fallen into, who have had, therefore, their memories steyned with the disgracfull epithites of "insanum parliamentum;[b] parliamentum sine misericordia;[c] parliamentum fustium;[d] parliamentum indoctum;"[e] and such like: but, if it bee lawfull to speak truth, when was any of these but when one party

[a] Cook, Inst. iii. p. 58.
[b] Parl. at Oxford, 42 H. III. anno 1258.
[c] H. Knighton, col. 2701, 2; 11 R. II. anno 1387.
[d] 4 Hen. VI.
[e] 6 Hen. IV.

was so prevalent the other two were forced to yeild unto it? Such I take that of Oxford to have beene, to which the lords came armed, and that of the 11 Ric. 2, when they appeared "cum sufficienti exercitu,"[a] the lords appellants' power beeing such as none can think it safe for the king and commons to have denyed what they would; to which may bee added 21 R. 2. when the king had so far prevayled as perhaps nether lords nor commons had that freedome was requisite; and therefore, for my part, what passed in either of these I never held justifiable presidents, and succeeding parliaments have endeavored to avoyd the like for the future. The statute of Malbridge, 52 Hen. 3. provided against those grandees, causers of the troubles at Oxford, that all men should receive justice in the king's courts, non to bee his owen carver, but make his distresses according, and, if otherwise, to suffer;[b] with divers other good rules for setteling a toterd kingdome in peace.

8. Which Edward the 1. his sonne (who may well bee stiled the Justinian of our kings),[c] esteemed the most wise and valorous Christian prince of his tyme, did much increase, and, seeing no greater mischiefes could come to such councells, then when the election of the members to be in it were not freely made, did, in his first parlyament, 1275, carefully procure an act[d] "que nul haute homme ne auter per poyer des armes ne per malice ou menaces ne desturbe de faire frank elections." And about 4 yeare after, knowing that of Tully to bee most true, "quod nihil exitiosius civitatibus, nihil tam contrarium juri et legibus, quam composita et constituta republica quidquam agi per vim," and how little freedome councells can have which are awed by the sword, it was expressly ordered, 1279, as what perteyned to him selfe to looke to,[e] that to all parliaments, treaties, and other assemblies, which should bee made in the realme of England for ever, every man should come without armor, etc.;

[a] Walsing. anno 1388, p. 365, 29. [b] Stat. Malbridge, cap.

[c] Lib. viii. cap. 90: Hist. Ital. Giovan. Villani, qui tunc vixit.

[d] West. i. cap. 5, 3 Ed. III.

[e] Stat. de defensione, portand. arma. 7 Ed. I. vet. Magna Charta, fol. 40 b.

which I take to bee the ground of those frequent prohibitions in Edward the 3. that no man should wear offensive armes, so much as swords, long knives, or other suspected weapons, or boys use games that might disturb any from peaceably attending the parliament, as wee may see, Rot. Parl. apres la feast St. Gregoire, 6 Ed. 3. n. 4, 13 Ed. 3. qunze St. Mich. n. 2.

9. I doe not deny but after these prohibitions our kings have beene forced to labour the appeasing of some jarres beetween the grandees who were in parliament, as, 5 Ric. 2,[a] betweene the duke of Lancaster and the earle of Northumberland; 4 Hen. 6.[b] the duke of Glocester and his unckle the bishop of Winchester, termed, therefore, "parliamentum fustium," because their followers carryed trunchions or cudgills; and divers other; but it must bee likwise graunted that those dissentions were great remorahs to the affaires of the commonwealth, and did generally happen in the tender years of young kings, which, in Ed. the 3d's, 4th's, and 5th's, did not all appear; and truly, for my part, when one side did so far prevaile as the other either durst not or could not with liberty oppose, I know not how it can bee called a free parliament.

Of the calling and concluding of Parliaments.

CAP. 13.

1. Sir Edward Cooke hath written so learnedly, according to his great experience and reading, of the beginning of parliaments, by either the royall presence in person or by representation, as I shall in that perticuler onely refer the reader to his book;[c] my intent

[a] Rot. Parl. in crastino animarum, 5 R. II.; Walsingham, Hist. anno 1381, p. 298, 41; Knighton, col.

[b] Rot. Parl. 4 H. VI. n. 10.

[c] Inst. iv. cap. 1, p. 6, 7.

beeing, in this, no other then to shew the frequency of their calling, and when they were to bee ended.

The same honorable gentleman affirmes, from the Mirror,[a] king Alured made a law there should bee a parliament held twise a yeare for the governing the people, yet amongst those of his remaining I doe not find any such; the truth is, he[b] mentions one ꝑolcꝑꝛemoꝺ, in his 22 and 30 chapters,[c] which Jorvalensis ever renders "publicus conventus," and Sir Edward himselfe,[d] elsewhere, to prove it alleadges a law of king Edgar's that sayes, "celeberrimus ex omni satrapia bis quotannis conventus agitur."[e] But I confesse neither heere nor in those of Canutus[f] (which repeat the same law), doe I conceive any thing spoke of a parliament; for the Saxon onely is ⁊ ꝺpa ꝓcıreꝛemoꝺ in either place, which Jorvalensis renders it in both "scire motus," and is in English properly the shire court; and though it might, during the eptarchy (whilst no man's royalty did extend much beyond a shire), bee construed for a parliament, yet it seemes to me very hard, when the kingdome was united under one king, to take for the generall counsell of all England [that] is plainly said to have beene but of one shire.

3. Sir Henry Spelman[g] sayes the lords were obliged, "ex more et obsequii vinculo antiquissimo," to wait on the king at Christmas, Easter, and Whitsuntide, "cum ad curiam et personam ipsius exornandam, tum ad consulendum de negotiis regni statuendumque prout fuerat necessarium." That after 1158, "tepuere paulatim magna hæc ipsa consilia seu parliamenta donec in recentioribus multo seculis ab Edwardo 3° suscitarentur." If this learned antiquary doe take these "magna concilia" for those courts wee now call parliaments, I confesse I much doubt whether they were such: first, beecause though they did sometymes meete at those tymes (as appeares by the

[a] Chapt. i. sect. 3, p. 10; Cook, Epist. lib. ix.
[b] Leg. Sax. Alured. i. p. 28, 29.
[c] Jorval. cap. xxv. col. 824; cap. xxxvii. col. 825.
[d] Inst. iv. p. 9.
[e] Leg. Edgar. cap. v. p. 64.
[f] Cap. xvii. p. 111.
[g] Concil. Spelman, to. i. p. 347.

lawes of king Æthelstan[a]), yet I have neither noted it to bee so frequent before the conquest, nor any such tye to have layne upon them, that I can either conclude it was a "mos" or "obsequii vinculum;" 2ly, heere is no mention of the commons, yet I conceive it evident they were members of our parlyaments; 3ly, I for my part have never read parliaments (at least since the conquest) ever to have met but "ex regia sanctione," or "edicto regio convocati," and such like, shewing they were on some especiall occasion sent for by the king, not "ex more obsequii vinculo," gatherd unto him; 4ly, it is playn they were very comon beefore Ed. the 3d's tyme, as the laws of Ed. the 1., Ed the 2., and Hen. the 3. doe sufficiently witnesse.

4. I have said before, cap. 1.[b] it seemed to me our parlyaments were drawne from that great ꝑolcꝛemoꝛ mentioned in the Saxon lawes,[c] and though I take the Confessor's[d] mention it to bee very good evidence for the time and manner of assembling this court, yet I doe much doubt of the saying it was an invention of king Arthur, for Beda,[e] as I have formerly noted, seemes to insinuate there was heere little knowledge beefore king Ethelberth of lawes; and Alfred speaks as if onely after the reception of Christianity "cætus in Anglia episcoporum aliorumque sapientum conventus agebantur,"[f] making no mention of any such assemblies heere held beefore. There is so much and so fabulous writ of Arthur, that no man can well tell what to beleive, but if such meetings were in his tyme, to which parlyaments have since succeeded, they are of greater antiquity then I assigned.

5. Yet for the tyme and manner of meeting, I conceive those lawes to be good evidence as what was the practis continued to that king's tyme, and to shew: 1. That such meetings was of certayne once a yeare, vidz. the first of May; 2ly. That upon any sodaine

[a] Leg. Æthelstani, in prefat. p. 53.
[b] Cap. xi. n.
[c] Leg. Æthelstani, cap.
[d] Leg. cap. xxxv. p. 146.
[e] Beda, lib. ii. cap. 5.
[f] Leg. Alured. p. 21, apud Jorval. col. 819, 50.

chance they were called together at other tymes; 3ly. That the manner of doinge was by ringing bells called morbel; 4. That they did in it "providere indemnitatibus coronæ regni," etc. which is that wee call the "ardua regni." 6. That there met at it "omnes principes et comites et similiter omnes proceres regni et milites et liberi homines." Of these, save onely of the first and second, this is not the place to treat; but those two I assure me were the grownd of the many petitions of the commons and nobility, so often assented unto by the king, that a parliament should bee held once a yeare.

6. Our auncestors, by the stirrs in Hen. the 3d's tymes and king John's taught wisdome, found neither side got by civill dissentions, and therefore laboured to settle the kingdome so in peace it might subsist without any neede of the sword to ende theire disputes, for which there was nothing so requisite as the auntient custome of the kingdome, the undoubted right of the subject to often meete in parlyament; the fittest meanes that can bee invented for the king to knowe his people's griefes; the most sure to have them redressed by him; and, indeede, but Magna Charta, I doe not know the observance of any law more pressed, nor so often assented unto, and soe punctually observed, and that it might not bee broken up without due answering the subject's desires. Which concessions of the prince, beecause they are not all to bee found in printe, nor all to bee seene in one place, I shall here set downe such of them as I have met with, for a testimony how much our forefathers care hath beene to leave that as a certayn inheritance to keepe their posterity in peace and the lawes dewly executed.

7. I shall beegin with the provisions agreede upon at Oxford 1258, 42 Hen. 3. where one is for the calling of parlyaments thus establisht by the 24 then[a] chosen for the government of the kingdome.[b] The tytle is thus:

[a] Vide Mat. West.

[b] Provisiones Oxon. ad finem Walteri Gisburn, in Bibliotheca Cottoniana.

"[a] Amendre de parlement et quant seront tenuz par an et comment.

"Fait a remembrer qe lez xxiiij. ount ordeignez que trois parlements seront par an, le premier az ottaves de Seint Michel, le second lendemain le Chandeleur, le tierce le premier jour de Juin, ceste a scavoir treis semains devant le Seynt Johan, et a ces troys parlementz vendrent les conseillers le roy eluz tu ne soient ils pas mandez, pur ver l'estat du royalme et pur treter les communes busoignes du reaume et del roy.

"Ensement et autrefois ensembleront quant mester sera par mandement le roy."

This is the first care I have met with since the conquest which is for holding a parliament (if at least it bee to bee understood of the high court) thrise a yeare, but that which followes I confesse I doe not understand; which is,

8. "Il fait a remembrer que le commun elize xij. prodeshommes que vendront as parlementz, et autrefoitz quant mestre sera, quant le roy ou son conseil lez mandra, pur treter des busoignes et du royaume, et la commune tendra pur establie ce que es xij. feront et ceo sera fait pur esprimer cost del commune."

How xij. should represent the whole body of the commons in the court of parliament, I cannot imagine; unlesse the meaning bee that in the intervalls xij. were to remayne with the king as representers of the rest, till the whole body were againe reunited to his majesty, whose consults he calls a parlyament, in no other sense then Math. Paris calls a meeting with the French, 1258, p. 1308, 37. But to come somewhat neerer:

9. The 16 March, 3° Ed. 2. 1309, there were certayn lords nominated to constitute rules for governing the realme and the king's house, with these limitations, that what they did were "en tele manere que lour ordenances seient fetz al honeur de Dieu, et al honeur de seynt esglise, et al honeur de nous, et a nostre profit de nostre peple, selom dreyt reyson et le serment que nous faismes a nostre coronement," etc.[b]

[a] A remembre.

[b] Lib. MSS. ant. qui; penes me remanent.

These having sat some tyme concluded on 44 heads (or as I accompt them 52), confirmed and yet extant under the great seale, 5 October, 5 Ed. 2. 1311,[a] the 29 of which, or as some have it 31 chap. speaks thus: "Purceo qe mutz de gentz sont delayez en la court le roy de lour demande, par tant qe la partie allege, qe les demandantz ne devient estre respondez sanz le roy, et auxint multz de gentz grevez par les ministres le roy encontre dreiture; des quels grevances homme ne pourra avoir recoverir sanz commun parlement; Nous ordonons qe roy tiegne parlement une foitz par an, ou deux foiz si mestre soit, et ceo en lieu convenable, et qe en mesmes les parlementz soient les pleez qe sont en la dite forme delayez, et les plees où les justices sont en divers opinions, recordees et termineez; et en la mesme maniere soient les billes terminez qe livereez serront en parlement si avant, come ley et reson le demande."

10. But these ordonances, however concluded upon by a select number of lords spirituall and temporall, chosen on the king's commands by the prelates, earls, and barons, and what they did auctorised by the king's letters patents, and published through the whole kingdome, yet having not past in parliament, could not have beene said to be law; it was therefore in parlyament 4^to^ Ed. 3. expressely provided that a parliament should bee held once every yeare, and more often if neede bee.[b]

11. Yet the commons, it seemes, did not think themselves secure; therefore they did petition, 36 Ed. 3.[c] that "pour maintenance de ditz articles et estatutz, et redresser diverses mischiefes et grevances qe viegnent de jour en autre, soit parlement tenuz au meinz chescun an, en la seson qe plerra du roy." To which the answer is, "Soit l'anciene estatute sur ce fait tenuz." I have alleadged this out of the roll because it is somewhat more large than the printed act, cap. x. in that it desires one to bee held at least once a year, but remits the season wholy to the king.

[a] In Bibliotheca d'Ewesiana.

[b] 4. Ed. III. cap. 14.

[c] Rot. Parl. 36 Ed. III. n. 25; et Stat. impres. cap. 10.

12. The commons, finding the good of frequent parliament[s], saw there was too great a liberty in the sheriffe, who was without tye and might returne whome he listed; they, therefore, the 50 of Ed. 3. deliver this petition:[a] "Prie la cõe qe plese establier par estatut en cest present parlement, qe chescun an soit tenuz un parlement, de faire corrections en royalme des errours et fauxcees si uls y soyent trovez; et qe les chevaliers des counties pur celles parlements soyent esluz par cõe eslection des meillours gentz des ditz countees, et nennie certifiez par le viscount seul sanz due election, sur certeyn peyne:" to which the answer is, "Endroit du parlement chescun an, il y a ent estatutz et ordenances faitz, les queux soient duement gardez et tenuz. Et quant al article del election de chevaliers qi vendront a parlement, le roy voet q' ils soient esluz par cõe assent de tout la countee."

13. Yet the commons were not out of feare but they might at sometymes want them, and, therefore, haveing a newe king, they begun with him in his first parlyament, petitioning him in the same words the lords had agreede upon in Ed. the 2d's, which because I have beefore set downe, from which this in effect differs not, and therefore there needes bee here only repeated the king's answear, which is[b] "Quant a ceo qe parlement seroit tenuz chescun an, soient les estatutz tenuz et gardez; mays quant al lieu où le parlement se tendra, le roy ent ferra sa volunte; et quant as plees des quelles les justices serroyent en diverses opinions, il y a estatutz en faitz, queux le roy voet qe soient gardez et fermement tenuz."

14. After these so solemne confirmations by two kings, I have not met with any petitions of the like nature for often calling of them, and, indeede, there needed not, for they were held so as the subject had no neede to complayn of their want. Richard the 2. in his parlyament at Glocester, professeth, by his chancelor,[c] one cause of his then assemblinge them to bee for that it had beene formerly agreede,

[a] Rot. Parl. 50 Ed. III. n. 186.
[b] Rot. Parl. 1 R. II. n. 95.
[c] Rot. Parl. apud Glocest. 2 R. II. n. 2.

on the desire of the lords and commons, "qe parlement seroit tenuz checun an;" and then adds, "mesme nostre seigneur le roy, veullant tout dys faire tenir toute bone covenant, et mettre en execution chescun ordenance faite en sez parlementz, ad fait somondre ce parlement," etc.

15. Undoubtedly our kings, as far as promises and oaths can oblige princes to the observance of lawes, did hold themselves tyed to the calling of them; and, though divers troubles intervening might sometymes hinder their meetings longer than the prefixed tyme of a yeare, yet the people, seeing the necessity, and that there was no other reason but constreynt which caused the disuse, did willingly submit unto it. Onely Henry the 8. either not to have his prerogative searched (knowing parliaments and law a principall means to keepe greatnesse in order),[a] or perswaded by the Cardinall, who, as his indictement [sayth], intended to introduce the civill law, called but one in 14 yeares. But he, fayling in an attempt to rayse money by benevolence, 16 H. 8. soone espied his error, and that prelate falling into disgrace about 20 H. 8. hee held them from 21 to the end of his life very often; finding the fabrick of this common-wealth to bee such, as hee could not well bee without sometymes calling them, he would have them very common; by which meanes it is almost incredible what he got past, as the statutes [that] concerne the descent of the crowne;[b] the liberty his successors were to have in repealing lawes made during their minority, at the age of xxiiij. without a parliament;[c] the adding strength to his proclamations;[d] the erecting new courts of justice;[e] the expelling the pope;—doe sufficiently informe those which are so curious as to looke into his actions. And, by duely tyming his buisinesse, what hee could not carry in one parlyament, taking the opportunity of a fayrer wind in an other, it is incredible what hee carryed in that court; as you may see, comparing what our

[a] Cook. Inst. iv. p. 361; Inst. ii. p. 626.
[b] 25 H. VIII. cap. 22; 28 H. VIII. cap. 7; 35 H. VIII. cap. 1.
[c] 28 H. VIII. cap. 17. [d] 31 H. VIII. cap. 8; 34 H. VIII. cap. 23.
[e] 27 H. VIII. cap. 27; 32 H. VIII. cap. 46; 33 H. VIII. cap. 22.

historians[a] write of the 22 or 23 Hen. 8. of men's so disposing their estate, as the crowne should not have the benefit of wardships, etc., with the statuts of 31 H. 8. cap. 1, and 34 H. 8. cap. 5. And the same courses were after held by his sonne and daughters.

16. Now as the frequent calling of them is good for the subject, suffering no ill to arise but it [is] quickly spyed and rooted up, so is it, in my opinion, of no lesse benefit to the crowne, which, accustomed to those meetings, barrs ill men of any opportunity to worke the people into a dislike of their soveraigne or present condition; which nothing makes them more apt to beleive, than a persuation he rules them for his, not their, good, that he will not heare their complaints, nor redresse their griefes but on force.

17. On the other side, parliaments thus often summoned never sat long; 3 weekes, a month, five weekes, an usuall tyme. I remember the great parliament, 50 Ed. 3. it is entred on the roule as a matter extraordinary that it had continewed "puis le commencement d' icelle tanque et c. durant en x. sepmains et pluis," some few daies above ten weekes.[b] "Parliamentum sine misericordia," 11 R. 2. did not sit above 14 weekes, for it continewed but 17 weekes and 2 or 3 dayes from the first meeting to the dissolution in all, and was adjourned 3 weekes and 2 dayes during that time by reason of Easter; and, beeing thus short, they never were burthensome to the subject in poynt of priviledge; which of late hath beene so great, as for my part I have beene of opinion, that, during their sitting, the justice of England did in a great measure sleepe, there being not lesse then 3000 persons protected from all suits in law.

18. Why parliaments were summoned, wee neede seeke no further then the law appoynts they shall meete once a yeare: 1. for redresse of mischiefes; 2. the maintenance of the lawes; 3. for correction of errors; 4. the remedying delayes in judgment; 5. in short, for advancing the good of the church and kingdome of England in every

[a] Hall, 22 et 23 H. VIII. fol. 202 b.; Grafton, p. 1206.

[b] Henry Knighton, col. 2701.

thing; and indeede I doe not know ought concerning either, may not in a mannerly way, being amisse, bee represented, and redresse of it sought in parlyament.

19. By what hath beene said, [as] it is not to bee denyed but our kings by law ought to call a parliament once a yeare, so experience shewes they for the most part actually did accordingly. But another question of great difficulty is, whether, beeing met, it might bee disolved without passing any act? Certainly the statuts, which are for the houlding it once a yeare, speak of it as of a parliament, were so to bee held; yet sure it can not have that name if no publique act passeth, nothing be done to prove it other then a private meeting. The "modus tenendi parliamentum," which I have seene in an hand of Ed. the Third's tyme, and is somewhere [a] exemplyfyed under the great seal of Ireland, as sent thither by Hen. the 2. (which I confesse I doubted of, for I never found the word "parliamentum" for this court in any writ of that age,) hath this passage: "Parliamentum departire non debet, dummodo aliqua petitio pendet indiscussa, vel ad minus ad quam non sit determinate responsum; et si rex contrarium permittat, perjurus est."

20. Amongst the questions propounded to the judges at Northampton the 25 August, 10 R. 2.[b] the 7th was "Numquid rex quandocunque sibi placuerit poterit dissolvere parliamentum, et suis dominis et communibus præcipere quod a bindere cedant, an non? Ad quam quidem quæstionem unanimiter responderunt: quod potest; et si quis extunc contra voluntatem regis procedat, ut in parliamento, tanquam proditor puniendus existit."

But for the answears then given, the judges sufferd very severely in the parliament next following;[c] and though the 21 Ric. 2.[d] their answers beeing again repeated before the king, lords, and commons, they did agree "qe lez ditz justicezez firent et donerent lour responces

[a] Mr. Hackwell, Passing of Bills, p. 8.
[b] Rot. Parl. 11 R. II.; et 21 R. II. n. 47; et apud H. Knighton, col. 2695, 7.
[c] Placit. Parl. 11 Ric. II.
[d] Rot. Parl. 21 R. II. n. 47.

duement et loyalment, come bones et loyalx lieges deveroient faire," yet the 1 Hen. 4.[a] did repeal all was then done, as beeing "en grant disheriteson et finall destruction et anientissement de plusieurs honorables seigneurs et autres lieges du royalme et de lours heirs a touzjours," and did establish the parliament held 11 Ric. 2.[b] "oue toutes les circumstances et dependences d'icel, estoise en sa force et virtue;" since when there was (so far as I have read) never any practice of abrupt breaking of parliaments till 12 Jacobi.

21. To that effect there are severall petitions yet on the roll from the commons, for examining and answering their petitions beefore the dissolution of the parliament, to which I never yet observed any prince give a denyall. The 18 Ed. 3,[c] "Prie la com'e qe les petitions qe sont ore mys avant, por diverses grievances faitz en diverses contees, soient examineez, et par bon conseil ordeigner remede, devant la fin du parlement, pur salvete du people;" and a little after, "et qe vous pleise ordeigner par assent des prelats et grauntz, certain gentz qe voillent demoerer tanque les petitions mis avant en parlement soient terminez, avant lour departir, issint qe la cõe ne soit saunz remede." Truly this was plaine dealing with the king, to desire him not to break them up till he gave them an answer, and that if he did they were without remedy; as much to say they had no good by their meeting; but his answer is very mild, "Quant al unzieme article, il pleast au roy qe les petitions soient veues et responduz."

22. So like wise in 25 year of the same king,[d] they petition "qe toutes les petitions resonables priez par la cõe soient grantez, confirmez, et ensealez avant le partir de cel parliment;" and heere the answer is, "Quant a granter et affirmer les petitions reasonables, il plest au roy q'il soit fait;" and again Rot. Parl. 45 Ed. 3. n. 16.

23. Yet notwithstanding all these so often promises for answering the commons, it seemes some of their petitions went unanswerd.

[a] Rot. Parl. 1 H. IV. n. 66, 70, 113.
[b] N. 70.
[c] Rot. Parl. 18 Ed. III. n. 12, pet. 11.
[d] Rot. Parl. 25 Ed. III. n. 12, fest. St. Hillar.

Therefore the 2 Ric. 2 they made this farther suite,[a] "Supplient les cões, pur ce qe petitions et billes mises en parlement pur diverses persones des cões ne purront d'icelles devant ces heures nulle responce avoir, qe de lour petitions et billes mises ore en cest present parlement, et des toutz autres queux seront mises en parlementz en temps avenir, qe bone et graciouse responce et remede lour ent soit ordene devant lour departir de chescun parlement; et sur ce due estatute soit fait en ce present parlement, et enseale a demeurer en tout temps avenir, s'il vous plest." To which his majesty gives thus far satisfaction, "Il plest au roy qe de tieles petitions bailles en parlement des choses qe allours ne purront estre terminez, bone et resonable responce soit fait et donez devant departir de parlement."

24. Upon the whole wee may see how great a trust was reposed in the king by our auncestors: first, for calling of parlyaments; secondly, for dissolving of them; for though there were a right they should meete once a yeare, and then not to put of till their petitions answerd, yet there was no other tye upon either then the sacred word of the prince, in whose will stoode both the calling his people together and the continewing of them so called. And this as it bred a mutuall confidence beetweene each, the subject relying on the king's promis for after meetings and redresse of grievances; and hee (though on good will), yet on their never fayling him with supplies in tymes of neede; did make the English esteemed both for wisdome and valour, and as considerable as any, if wee looke on either their counsells at home or actions abroad.

25. Indeede, for my owne part, it hath ever appeered to mee little lesse then a miracle to observe this little kingdome at one tyme give the lawe both to Scotland and France, of which, after God's blessing, no cause can bee assigned but the good intelligence betweene prince and people; and when at any tyme that did a little decline, as under Ed. 2., Ric. 2., and Hen. 6., what did this nation gain, but ruine at home, and contempte with losse abroade?

[a] Rot. Parl. apud West. 2 Ric. II. n. 28.

26. Now this good understanding, by often entercourse thus wrought, did remayne without any other ty then what I have said. It is probable some kings did not like this frequent meeting, and would some tymes have diverted them; "rex voluisset omnino subterfugisse dictum parliamentum ea vice," sayth Walsingham [a] of Ric. the 2.; but none forbore the calling them at convenient tymes, and if not every yeare, yet, as I have noted before, so often, there was no cause to complaine of their lack. King James was the first, after that long stopp of parliaments in Hen. the 8th's tyme, that made any discontinewance of them, who, after Jac. 12., beeing pressed by his necessityes, did sometymes call one and in discontent dissolved it, putting out some declaration as a justification of his doing so, as that they invaded the rights of his crowne, that they spoke too antimonarchically, etc.; which perhaps might bee yet not wisdome in a prince on those termes to shew a discontent with the representative body of this whole kingdome, nor to give factious spirits oportunity to raise discontents with his commons.

27. Especyally when himself upon some occasions would permit them to intrench upon the true prerogatives of monarchy further then any wordes, as in permitting his chancelor St. Albon's and some commoners to bee judged in parliament, 18 Jac. which was a leading to the earl of Midlesexe, his treasurer, 21 Jac. a thing so unusually done before, as it was almost forgotten; and whether taken away by 1 Hen. 4. cap. 14. [b] might have endured a good dispute, and no doubt by him beene then stopt; which after so troubled his sonne in the duke of Buckingham's case, [c] who taking the same dislikes his father had done at the proceeding of that court, was the longest of any prince, at least since Ed. the 3. without calling of one; and did in the ende (for "ex malis moribus bonæ leges,") give his people more assurance then any former king, they should never bee above three years destitute of a parliament; which, because it is, in my

[a] Walsingham, 11 R. II. anno 1388, p. 365, 28.
[b] Rot. Parl. H. IV. n. 144.
[c] Parl. at West. 1 Car.

opinion, as great if not the greatest bounty ever past the crowne, it will not bee amisse a little to remember how it came to be asked by the subject, and why condiscended unto by the prince.

28. There had beene no sitting in parliament from the 2 day of March, $162\frac{8}{9}$, till the 13th of Aprill, 1640; for, though it was adjourned that second of March to the 10th of the same, yet the manner of doing in the house of commons gave so great distast at court as divers members were committed, and the 4th of March a proclamation issued out for the dissolution of it; and so it rested, fewe men hoping to see any more parlyaments; which opinion was the more increased when they saw an indeavour to supply the publique wants without one, a course beeing taken 1634 by writ to rayse money for setting out a navy; which yet was then directed onely to maritime townes,

29. But was the yeare following generall throughout the whole kingdome; and comming to a resolution in poynt of law in the Exchequer chamber 1638, though some of the judges, especially Mr. justice Crook, spoke excellently against the king's power to impose that way (whose reasons it will not bee necessary to mention, they beeing now in print), yet it was adjudged in behalfe of the king.

30. About the same tyme his majesty sent downe a booke of Common Prayer into Scotland, which received there much more opposition; for from that since grewe many troubles, and the whole kingdome joyned as it were in opposition of whatsoever the king commanded; which made him then again think of calling a parliament in England, summoned to meete the 13 of April, 1640, which it did, and most unexpectedly, without doeing any thing, broken up the 5th of May following, not without the great amazement of many understanding men, that (it havinge carryed it selfe with such moderation as not to have put to the question any thing might displease the king,) they should be sent home without doing ought.

31. Soone after this, the Scots, come in an hostile manner into England, possest themselves of Newcastle. So as the king, now forced to raise an army, found his subjects very unwilling to joyne

in armes against them, and his majesty beeing petitioned against this warr by some lords, and the city of London seeing his kingdome every where distracted, hee first called his great councell, or all the lords, to him in the North, and after that concluded on his parliament to begin the 3 of November, 1640, at London; where, the 16th of February following, 164$\frac{0}{1}$, his majesty passed an act willing the said former lawes for holding a parliament once a yeare bee kept; but if not one, to meete once every three years, according to divers limitations and ways of summoning set down in the said act; and no parliament from thenceforth assembled to bee dissolved or prorogued within 50 dayes after the tyme appoynted for their meetinge; all which, beecause it doth more fully appeere in the act which is print, I shall referr the reader to that.

Of the manner of proceeding in parliament in redressing of publique evells.

CAP. 14.

1. I HAVE in the former chapter shewed how carefull our auncestors were the kingdome might have their just grievances satisfyed, and that therefore the parliament did not usually ende while any petition remayned unanswered; but they being of severall sorts and from divers persons preferred into that court, the question is, which they are. At the beegining of every meeting there is appointed [a] receivors and triors of petitions, and those as well for Gascoin, Bretaign, Scotland, the isles, and other forrayn parts as for England. Now to

[a] Rot. Parl. 18 Ed. III. n. 3. et passim.

think there was a tye on the monarch to answer all those in an English parliament, is what perhaps every man will not bee easily brought to believe.

2. The like may bee said of those are meerely of grace, which onely depend upon his majesties favour; but the petitions that have this tye annexed to them I take to bee onely such as came from the commons of England, commonly known by the name of the commons' petitions; out of which the best and greatest part of our lawes are taken, and unto which our kings were in justice obliged to give some answere; of which, for the better understanding of that wee treat, it will bee necessary a little to looke upon the auntient manner of making lawes with us for redresse of publique grievances. I confesse I had in this rather heare the opinion of more learned men, and shall bee ever ready to retract what I deliver as my owne conceipte upon better grounds, and, giving my reasons for what I hold, leave every one free to resolve upon better.

3. I conceive therefore the manner of proceedings to have beene thus: in all parts such as observed any ill the kingdome beegan to bee oppressed with, did upon good advise drawe petitions for the removalls of it, which beeing delivered to the knights of the shire, and by them presented to the house of commons, are those wee find in the parliament roll called "petitions des cões," which afterwards assented to by the lords, and answeared by the king, the lawe was drawne up by the judges out of the petition and answer both; and if the cause were of so generall concernment the whole shire from whence it first moved had interest in it, then I presume the knights of the shire gave them understanding what past, at their returne from parliament.

4. That those petitions in the roll of parliament called "petitions des cões" were not only framed by the howse of commons, but were as instructions (for the most part) given them from their counties, I conceive very cleere: 1. because it is repugnant to the nature of any trustee what ever, whose power is onely temporary by an other's choise, hath a salary for his pains, called his wages, not to follow the

instructions of those who send and pay him; and therefore to think our auncestors, that were wise men and framed a government inferior to none I ever read of, did so utterly exclude themselves from having any influence on their delegates' actions, will be hardly imaginable; 2ly, the petitions themselves are many tymes called "the petitions of the commons of England," which were improper for those were made onely by the commons in parliament.

5. The first of Hen. the 4. they have this tytle, "les petitions bailles par les cões d'Engleterre en parlement ensuent cy apres;"[a] and then are thus directed "A tres excelent, tres redoute, et tres gratious seigneur nostre seigneur le roy, supplient humblement voz povres liges les cões de vostre royalm d'Engleterre," etc.; the 29 Ed. 3. thus: "les petitions de la commune d'Engleterre;"[b] which a little after styled the commons of the land, "A nostre seigneur le roy supplie la cõe de la terre;" phrases very improper to denote onely those who met in parliament. Who would see more of this sort may examine Rot. Parl. 20 Ed. 3. n. 34; 15 R. 2. n. 26; 16 Ri. 2. 21; 18 R. 2. n. 7; 20 R. 2. n. 34, and divers more in the tymes of Ed. 3., H. 4., H. 6., in none of which they are said to bee the petitions of the commons in parliament, but of the commons of England, whose agents they were. The 46 of Ed. the 3.[c] hath an inscription differing from any other I have met with, "les petitions des com'es et des citizens et burgeis et les respons sur y celles," etc. If wee shall understand the citizens and burgeses heere specified to bee those who were in parliament for several townes, how can the word commons signifie the knights of shires, otherwise then as they preferd the petitions for those commons whom they represented?

6. There is no doubt but amongst them there were some framed by the knights and others, which the finding them sometyme distinguished from the others doth cleerely shewe the other were of a differing nature from them. Amongst the petitions directed to his

[a] Rot. Parl. 1 H. IV. n. 95.
[b] Rot. Parl. 29 Ed. III. n. 12.
[c] Rot. Parl. 46 Ed. III. n. 15.

majesty, 50 Ed. 3.[a] wee find some touching the pope and cardinalls thus entyteled: "A notre seigneur le roy et son conseil, priont chivaliers des countees, citezeins des citees, et burgeis des burghs, qe sont venuz a ceste parlement pur la cominalte de royalme, et supplient de part la dite cominalte," etc. These are certainly such as were preferd by the house of commons, and of a differing nature from those (amongst which yet they are comprehended) which bear this direction: "A notre seigneur le roy, supplient toutes les cōes de sa terre," etc.

7. One of which, touching the jurisdiction of the castle of Dover, wee doe certainly know not to have beene drawne by the parliament, but by the abbot of St. Augustine's, and some others of Kent, against the encroachment of the court there, and by them preferd into the howse of commons with some others (not found on the roll), for remedy against the extortions of it; which yet, passing as one of the commons petitions, wee must conclude that howse had noe other part in it but onely the presenting of it to the king; and so for the rest; compare Rot. Parl. 50 Ed. 3. n. 135, cum Willielmo Thorn, Chronic. col. 2153, 25. The 2 H. 4.[b] the king commanded the commons "de metre les d'ces requestes et lour autres petitions faitz a cel temps en leur cōes petitions;" by which it is playn there is a difference betweene such as they made themselves to the king from those are called "les cōes petitions."

8. The 1 of Hen. the 4th,[c] amongst "les petitions des cōes," one is against a sort of persons who, joyning in confederacy, hindred the countryman from his necessary husbandry, going to his parochyall church, etc. But the answer is, "Celuy qe informe la bille veigne al roy et son conseil, pur luy enformer clerement, et le roy fera remedie par advis de son conseil:" from whence I gather the party who found himselfe grieved informed the mischiefe; the house of commons, without fully examining the truth, presented the thing for

[a] Rot. Parl. iii. n. 94, et n. 52; vide 8 H. VI. n. 41, 42.
[b] Rot. Parl. 2 H. IV. n. 13.
[c] Rot. Parl. 1 H. IV. n. 157.

remedy; but the king willed the party should attend his councell: certainly, if the petition had beene concluded on by the whole howse of commons, the king had not so barely past it with "celuy qe enforme la bille."

9. The 20 Ric. 2.[a] the king, upon Candlemas day, informed the lords, hee understood the commons had the day before, in a conference with them, insisted upon some things "encontre sa regalie et estat, et sa royale liberte." The chancellor shewed that it was in desiring his howshold charg might bee diminisht, that hee would not entertaine in it so great a trayn of bishops, ladies, and their retinew; after which, the king added himselfe, "Coment del don de Dieu il est par line et droit d'heritage roy et enheretyer del royalme d'Engleterre, et voet avoyr sa regalie et liberte royale de sa corone;" and, understanding the commons were moved to this by a bill given in unto them, the duke of Lancaster, from the king, charged the speaker, on his alleagiance, to declare who gave it them. The day following, the commons were shewed by the lords the king's pleasure, who, thereupon, submitted themselves to the king, and declared one Thomas Haxey, a clark, to have preferd that bill in unto them; who, for his so doing, was condemned as a traytor; yet, beeing an ecclesiastique person, on the petition of the prelates, had his life pardoned, but was committed to the custody of the arch-bishop of Canterbury.

10. The 1 of Hen. the 4. Haxey delivers a petition into the upper house, that hee had preferd a bill to the commons in parliament, 20 R. 2. which hee conceived to the honour of the king and kingdome, for which, by the will of king Richard, he was adjudged a traytor, contrary to right "et la course q'avoit este devant en parlement," and did therefore desire a relaxation of his censure. The king, upon this, by the advise of all the lords spirituall and temporall, did ordain the said judgment, so given against him, should bee "tout cassees, reverseez, repellez, et adnullez, et tenuz pur nulle force et

[a] Rot. Parl. 20 R. II. n. 13, 14, 15, 23.

effect," etc. A little after, in the same roll, amongst the petitions of the commons, there is one for the restitution of the said Haxey, and adnulling what had past against him, affirming it to have beene "encontre droit et la cours quel avoyt este usé devant en parlement, en anientissement des costumes des cōes;" to which the king assents, and that the said Haxey should bee in all poynts as beefore the said judgment, "come en le recorde ent fait et enrollez par devant en ceste rolle de parlement y piert pluis a pleyn."

11. Upon this whole case it seemes to me the petition the king tooke offence at, 20 R. 2. was not preferd by any of the house unto them; 2dly, that what was then done was according to the auntient use of parliament; 3dly, that the stopping of it was the destruction of the customs of the commons; 4thly, it is very probable that petition for his restoringe was put in by some perticular who did not know how the businesse had beene all ready setteled by the king and lords; which, if it had beene the commons in parliament, they would with their suffrage have confirmed what had beene allready done, according to the course now used, of what passeth first in the upper house; not "de novo" have begunn a newe bill.

12. That the commons in parliament did but as trustees receive and forward the request of the counties, doth further appeere by sundry petitions yet remaining on the parliament roll, addrest to the howse of commons, and by them, without any alteration, so much as of title, to the king, as thus:[a] "A les tres sages cōes esteantz en ceste parlement priont les cōes." No body petitions themselves. Yet more playn, 10 H. 6.[b] thus: "To the right wise and discreete commons of this present parliament assembled, praye meekly all the commons of the shire of Cornwell," etc.; yet some of them they confesse themselves were moved to make, by the many complaints they received from divers perticulars, etc.[c] "prions les cōes, pur ceo qe diverses lieges nostre tres souveraign le roy piteousement et dolo-

[a] Rot. Parl. 2 H. VI. n. 45.
[b] Rot. Parl. 10 H. VI. n. 36.
[c] Rot. Parl. 2 H. VI. n. 46.

reusement pur lour diverses billes a les ditz cões en cest present parlement baillez ount monstrez qe," etc.

13. By what hath beene said, it is playn such as found themselves grieved did in the vacancy of parliaments prepare their requests to bee presented to the king by the howse of commons at their next meeting, amongst "les petitions des cões," and that the howse of commons were not the alone framers of them but preferrers and forwarders, as good servants to the common-wealth, [of] what others thought fitt; for my part, if any shall conceive otherwise, I thinke it will bee very hard to reconcile many passages in the records of parlyament. I will onely instance in one:

14. Rot. Parl. 5 R. 2.[a] the lords spirituall, temporall, and commons (so says the record) joyned in making severall lawes, of which the last is touching punishment of heretiques. The 6th of R. the 2.[b] of five lawes that then past, the commons take exceptions onely at the last, and affirme what past "ne fust unqes assentu ne grante par les cões," but what was done, past by the prelats without their assent.

To say the commons in parlyament did not assent to this is expressly against the record of those tymes, which beegins, "Pour cõe profit du royalme d'Engleterre ayent este faites pur nostre seigneur le roy, les prelatz, seigneurs, et cões du dit royalme esteantz en ceste parlement," and then, as in the printed book, repeats them to the end: yet it is certayn this act was esteemed a statute by the commons themselves, for they affirme "un estatute fuist fait," and, a little after, "qe celuy estatut soit anienti," etc. which cleerely had beene none, had it past without the assent of those who sate in parliament, and they, instead of desiring a repeale, would have protested it had beene no law, wanting the assent of one of the estates.

15. But the way which I conceive they past, salves all these ambiguities: it was a law, in respect the commons who met 5 R. 2. assented to it; it was desired it might bee repealed, in that the com-

[a] Rot. Parl. lendemain Jehan Port Latin, 2 R. II. n. 17, et cap. 5.

[b] Rot. Parl. 6 R. II. octaves St. Mic. n. 52.

mons of the kingdome had never any intent of subjecting themselves more to the prelats than their auncestors were, as they expressed in this petition. It is not to bee omitted, that those five lawes, made 5^to^ R. 2. were not made upon "les petitions des cōes," as usually the estatutes of those tymes were, but meerely by such as then came to the parliament, who, in that one perticuler, went further than the common-wealth liked.

16. By the writ for chusing such as are to bee chosen knights of the shires, it is playn they are to be elected "qui plenam et sufficientem potestatem pro se et communitate comitatus prædicti," etc. "ab ipsis habeant;" and, a little after, "ita quod pro defectu potestatis, seu propter improvidam electionem, dicta negotia infecta non remaneant," etc. The sherifes' returne of the said knights speaks as much: "Eligi feci duos milites gladiis cinctos, qui plenam et sufficientem potestatem pro se et communitate comitatus predicti habeant, ad faciendum et consentiendum iis," etc.

Now it is cleere the writ requiring an election of knights with full power, and supposing there may be a defect of such power, etc. cannot but import they received it from the electors as a trust reposed in them, to bee managed for their good.

17. The first of H. the 4th,[a] it is expressly said, the country ought to be free, "ad eligendum et deputandum milites pro comitatibus ad interessendum parliamento, et ad exponendum eorum gravamina et ad prosequendum pro remediis super inde prout eis videbitur expedire." The 7th of H. 4.[b] shewes that sherifes made sometymes returnes by affection, to the great slaunder of the counties, and hinderance of the businesse of the cominalty of the said counties; which proves such as appeare in parliament to bee no other than servants deputed wholy to manage their businesse whom they represented, who paid them for their abode, called in the rolls their wages; which, when some townes neglected, the most notable and wisest withdrue themselves from the service; of which the commons made complaynt, 8 H. 6. n. 41.

[a] Rot. Parl. 1 H. IV. n. 36.

[b] Rot. Parl. 7 H. IV. n. 139, et cap. 15.

18. From hence is gathered how strict a dependance the members of the lower house did take themselves to have upon those townes or countries whom they represented, who looked on them but as trustees to the common-wealth, that got nothing but trouble by their deputation; and, least any might imagine they had thoughts of sparing themselves or pressing others, the poynt wherein it was likly they would bee most apt to doe it being in guifts to the prince, to shew the cleerenesse of their intentions that way, there are many petitions in the roll that no persons who sate there should at all meddle in assessing or otherwise leavying of it; vide Rot. Parl. 22 Ed. 3. n. 24; 45 Ed. 3. n. 10; 2 R. 2. at West. n. 51; 10 H. 4; 13 H. 4. n. 10.

19. Neither did they hold so blind an obedience from those whom they represented due unto them, as they must beelieve all good beecause they concluded it; but many tymes, in poynts of difficulty, they did desire to have the advise of those from whom they came; and indeede as it is a vanity to think fit for them to have recourse to those who chuse them in matters doe ordinaryly occurr in parliament, so in things are so new, as the like did perhaps never happen before, or very rarely, I can see no reason, under the generall tytle of a trust, any should ingage (contrary to former use) a county or kingdome, without at all acquainting them with it; certainly our auncestors did not so conceive of it.

20. The fifth of Ric. 2.[a] the king, moeving for a supplye, the commons made answere that, considering the generall distaste then raigning (about that tyme was the insurrection of Wat Tyler), "ils n'osent ny ne veulent en aucune maniere granter taillage," etc.; but, much businesse remayning undispatched, desired the parlyament should bee adjourned tyll after Christmasse, "issint qe en le moyen temps chescun de eux pourroit soy adviser de sa part de bone remede; et pensoient qe devant lour retourn ils ensi ferroyent devers lour cōes, qe les indueront tiellement, chescun en son pais, qe mesme la cōes serra de meilleur volunte d'ayder et donner a lour

[a] Rot. Parl. 5 R. II. n. 35, 36, 37, in Crast. Animar.

roy q' ores ne sont;" for which cause the king was very well content with their retyring home for a small season.

21. The 2 Hen. 6. the parliament was held by the duke of Glocester, the king's commissioner; the 17 of December it was thought fit to adjourne, that every one might keepe Christmass at his owne house, "à l' intent qe les ditz cões, chescun par soy en sa pais, purra notifier et declarer a ses veisins les grandes necessites du royalme, a eux par les ditz seigneurs de parlement purposez et declarez, au fin qe, mesmes les necessytez issin notifiez et conuz, les purroyent les pluis chierement et tendrement prendre a lours cõers et le plus hastivement purvoyer de remede."

22. But of all presidents of this nature that of 13 Ed. 3. deserves not to bee forgotten. There was much treaty in it how to help the king then embarqued in the French warrs. The lords proferd of their demeans the tenth shefe, fleece, lambe; but the commons answerd, "purceo qu'il covient qe l'ayde soit grande, en ce cas ils n'oseront assentir tant qu'ils eussent conseillez et avisez les cões de lour pais;" and did therefore desier another parliament might bee summoned, and command given the sherifes to send two knights of the best esteeme of each county, that in the interim they would retyre home and doe their best "pur aver ayde bone et convenable," not doubting, by God's assistance, of a good issue.

23. Some will have it that the commons made this excuse beecause the lordes did heere break their priviledg in giving first; but this is to fancy a cause not at all in the record, contrary to what they assign, and without any probability; for, if it were so, how came it to passe the lords, in another parlyament held the same yeare,[a] persisted in their former guift; yet so as, if they misliked the manner by them propounded, they would assent to any other, so the king might bee conveniently supplyed and the people the least burthened? To which their answer was, they would treat together, and, by the help of God, did not doubt to give such an answer as should please the king

[a] Rot. Parl. oct. Hillar. 13 Ed. III. n. 6, 7, 8.

and all his councell; and the 19 of Feb. made offer of 30,000 sacks of wool: the lords nothing swarving from their former intentions.

24. The 14 Ed. 3.[a] the 9th fleece, lambe, etc. was condescended unto, and the same yeare, in July, another parliament met to provide how the king might bee the more speedily supplyed with that subsidy; whilst they were in treaty, the earls of Arundell and Glocester came from the king bringing newes of a great victory, and letters to the lords, by which they saw his majesty must bee supplyed with good store of treasure,[b] "per quoy" (sayes the record) "les grandes sercherent totes les voyes qu'ils poant aufin qe le roy fust hastivement aydez, et lour fu avys qe pour hastive chevance et covenable fayre sur la grante necessite, il covendroit avoir un certain nombre de saks de layn, et sur ce parler as chivalers des contees d'avoir lour asse[n]t," and did themselves agree to furnish immediately 20,000 sacks of wool; the instrument to bee subscribed by all the lords spirituall and temporall, as well absent as present, to bee under the great seal, and delivered "as chivalers des countees de reporter en lour pais," etc. Surely in those tymes neither house did stand so much on the priviledge of first giving, as they did on the necessityes of the king and kingdome; and did more looke at the reall good of the people than the formes of proceeding, as what would bee more to the satisfaction of those who sent them thither.

25. By all this wee may gather the knights and burgeses of counties did make relation at home of as much as did in parliament concerne their counties, townes, or particulars, themselves; and that of the 39 Ed. 3. were a very hard intendment in law, that all were bound to take notice of what is concluded in that court, beecause there are knights and burgeses from all parts, if no obligation did remayn on them to acquaint those from whom they come, and by whome they are concluded, of any thing there done; and as long as counties and townes payd them, and men interpreted the sitting in

[a] Rot. Parl. en my Quaresme, 14 Ed. III. n. 5, 6; et Stat. Impres. cap. xx.
[b] Rot Parl. post fest. Transl. S[ti] Thome, 14 Ed. III n. 10.

parliament rather a burthen than an honour, ther is no question they did expect some returne of what ther past, and it is probable to have beene frequently done, but since perhaps not so usuall. Yet the commons had not far forgot their auntient manner in Ed. the 6th's tyme, but that having graunted so unusuall a reliefe to that prince out of sheepe, clothes, etc.[a] as the clothiers in Devonshire did find themselves not able to beare it, and therefore did exhibit a byll to the commons the sessions next following for some ease in the same, it was not onely received by them, but promis made they should have answer thereof at the returne of the knights of that shire.

26. From hence grew that resolution of all the lords, 39 H. 6. "That every person suing to that high court, of right must be heard, and his desire and petition understoode;" shewing they were there generally to give ease to all men, not for any private ends of their owne whatever; and indeede, as in those dayes the generall ayms was no other than the mutuall good of king and people, so if they did ought looked otherwise, they were by some grave admonition recalled backe. This auntient care towards the begining of H. 4. beegan somewhat to slacken. The chancelor told them, 4[to] H. 4. beefore that tyme the lords and commons had beene observed to bee "pluis entendantz pour lour singulers besognes qe pour le cõe profit et ayde du royalme,"[c] and therefore did now charge them in the king's name wholy to attend the affairs of parliament.

27. By what hath beene said, wee may see how the howse of commons came to bee possest of those petitions, which, aproved by the lords, and assented unto with such qualifications as the crowne thought fit to add (which many tymes conteyned the greatest part of the law, as is to bee seene by the statute of treason 25 Ed. 3.[d] so much esteemed in after tymes, and is in effect no other than the king's answer,) out of them both the law was drawn; for though it doth not

[a] 2 et 3 Ed. VI. cap. 36.
[b] Journ. de Co'es, 3 Ed. VI. Novemb. 16, 1549.
[c] Rot. Parl. 4 H. IV. n. 4.
[d] Rot. Parl. fest. Hillar. 25 Ed. III. n. 17.

often appear the lords did concur with the commons in their petitions,[a] yet the reason beeing sometymes rendered that the lords, or king and lords, would not assent unto them, proves enough they did to such as beecame lawes. The 2 H. 4. n. 13, the last of January, the commons make many requests by mouth; the king willed they might bee inserted "en lours cōes petitions, et sur ceo le roy, par advis des seigneurs espirituels et temporelx, lour donroit response resonable;" than which there can bee nothing more playn than that the answers wee have were set downe by the advise of both king and lords.

28. But there is another thing to me of far greater weight, and which I should bee glad to receive satisfaction from some more learned man; I shall only propound it.

The king delivers his answers to their petitions many tymes so qualified with restrictions as it indeede makes a playn alteration of what is desired, and yet those alterations are lawes as well as the rest; neither doth it appeare how the commons ever could assent unto them. 1 H. 4. the commons disclaym all right of judicature, which is acknowledged,[b] "sauve q'en estatutes, affaires, ou en grantz et subsides, ou tiels choses, affaires pur cōe profit du royalme, le roy voet avoir especialment lour advis et assent," which cleerely shewes there was no lawes without their concurrence.

29. The second of Henry 5.[c] the commons shew the king his cominalty to have ever beene members of his parliament, as well assenters as petitioners, and doe desire nothing may bee ingrossed as a statute and law which might change the intent of the thing asked, bee it by the speaker's mouth or their petitions in writing; yet so as, if they asked two things or more, it ever to stand in the freedome of his regalie to graunt which graunt hee lust, and to werne the remanent; to which the answer is, The king of his grace especyall

[a] Vide Rot. Parl. 1 R. II. n. 111; 2 H. IV. n. 13, 23, 97; 25 Ed. III. fest. S^ti Hilarii, n. 12.

[b] Rot Parl. 1 Hen. IV. n. 79.

[c] Rot. Parl. ap. Lecest. 2 H. V. pet. 10.

graunteth that from hensforth nothing bee enacted to the petitions of his commune, that bee contrary of hir asking, whereby they should bee bound without their assent, saving ever his real prerogative to graunt and deny, etc.

30. By this it seemes to me those answers the commons heere complayn of did not passe with their consent, for then they might have stopt in their owne house ought which changed their intentions; and indeed how is it possible to bee otherwise? The king gives his resolution the last day of parliament, when all is done. This is proved by the record 2 H. 4.[a] where the commons, the 26 February, desire his majesty would answer their petitions beefore they graunted the subsidy; the king replies, hee will confer with the lords, and by their advice doe what should bee best; but afterwards, the 10 of March, which was the last day of parliament, he told them "qe celle manire de fait n'ad este fait ne use en nul temps de ses progenitors ou predecessors, q'ils averoient ascun responce de lour petitions ou conisance d'icelle devant q'ils avoient monstrez et faitz totz lourz autres beesoignes du parlement, soit il d'aucune graunt, affaire ou autrement, et purtant le roy ne vorroit changer les bones custumes et usages faitz et usez d'ancien temps."

31. To which I may adde, there are some petitions which had their answers (now part of the lawes they produced) added not untill the parliament was dissolved; 15 H. 6., cap. 6, 7,[b] had the limitation to continew but during his majestyes pleasure, added unto them the 22 June, that parliament ending the 27th of March beefore. The like may bee observed in the rolls of 1 H. 6. n. 21.; 4 H. 6. n. 21; 6 H. 6. n. 45, 46; for though the manner of answering petitions, the parliament dissolved, was layd against Ric. the 2.[c] as a great matter, yet in H. the 6th's tyme wee find it frequently practised; a certaine signe the errors so much condemned in that unfortunate prince were not so heynous as the world was then made beleive. But to procede:

[a] Rot. Parl. 2 H. IV. n. 23. [b] Rot. Parl. 15 H. VI. n. 33, 34, 35, 36.
[c] Rot Parl. 21 Ric. II. n. 54, 74; 1 H. IV. 25, 74.

32. The first of Hen. the 4.[a] the commons assented the king should so moderate the statutes touching provisions from Rome of ecclesiasticall preferments as himselfe saw good. The second of Hen. 4.[b] the 2 of March, they explayn themselves, and desire "qe nulle soeffrance, ordinance, ou moderation se face aucunement ou tiegne lieu pur les cardinalx ou aucuns autres aliens d'aucunes benefices deinz le royalme." The king as it seemes makinge some difficulty to assent to this, the 9th of March they shew the former permission of 1 Hen 4. was enrolled otherwise than had beene agreed upon in parliament, and intreate the same might bee examined by the lords spirituall and temporall, etc. The king, by protestation, the day following, that this should bee no president for the future, causeth all the lords, the justices, and other counsellors to bee severally demanded in full parliament, in presence of himselfe and the commons, who all testified the record to bee rightly entred "en manere come il fust parlez et accordez par les seigneurs et cōes suisditz." By all which it is manifest the commons were not privy then to the enrolling of what past in parlyament; for, if they had, it could not have beene said by them things were recorded otherwise than past by them, neither ought they have beene changed or added to, afterwards, in any tittle, which yet these examples and many more shew they were.

33. And certainly from hence it proceeded that they so much desired the affayres of parlyament might bee enacted and engrossed, "devant le departis des justices tant come ils les ayent en lour memoire."[c] To which was answered, of Henry 4., that the clark of the parliament "ferroit son devoir pour enacter et engrosser la substance du parlement par advis des justices, et puis le monstrer au roy et seigneurs en parlement pour scavoir lour advis": which perswades me in former tymes the manner to have beene, the clark of the upper house, called "clericus parliamentorum," drew up, by the advise

[a] Rot. Parl. 1 H. IV. n. 85.
[b] Rot. Parl. 2 H. IV. n. 26 ; vide ibid. n. 42, 45, 63.
[c] Rot. Parl. 1 H. IV. n. 21; 7 H. IV. 65.

of the judges, the substance of what past in parliament, of which the king caused to bee proclaymed in all parts what of them hee pleased as lawes, which were so reputed and taken; and this roll, beeing by this advise thus framed and transmitted into the chancery, is the onely authentique record of what was done: no memorialls beeing of any value but what is in that.

34. And therefore wee never find any reference to the clark's journalls or otherwise, but onely to the roll of parliament, bee the tyme never so short, as, Rot. Parl. 1 H. 4. n. 66, speaking but of 21 Ric. 2. "as may bee seene," sayes it, "in the roll of parlyament." So, likewise, 7 Hen. 4. n. 66, the commons, exhibiting many articles as directions for the privy counsel, judges of those tymes, etc. they desire they may bee entred in the roll of parlyament, which, doubtlesse, had beene more proper for the journall booke if it had beene then kept; but in those tymes I conceive all notes of that nature were delivered to such as drue up the roll, which perfected, they were cast away or burnt, or else it cannot bee but some would remayne before 1 Hen. 8. or Ed. the 6. his tyme.

35. By this wee conclude the constitution of this court is wholy for the good of both king and people; and, whereas the Ephori in Greece, the Tribunes in Rome, the Curatores, as Mat. Westminster[a] seemes to call them, first heere in England under Hen. 3. did grapple to themselves what made them not onely odious to the great ones but burthensome to the meaner, so I think I may boldly affirme the auncient proceedings of parliament, well followed, there is the least liklyhood of hurt to ensue to any perticuler, and the most good to the generall, of any constitution of state tyme hath produced; the commons (without whom no law is made), beeing trusted with the kingdome's purse, not to expend it themselves (for then they might bee lavish), but to give it to another, who, by sworn officers, distributes it for the kingdom's service; and those expenditors subject to question if they doe it amisse, yet without other reward than ordi-

[a] Mat. West. anno 1265, p. 33, 28, totius regni curam susciperent. Vide p. 336, 30.

nary for their service, so as the guift comes absolutely to the prince's coffers, of which there is a memorable president, 51 Ed. 3.[a]: There was given in parliament an unusiall subsidy of 4*d.* "per teste," and withall the commons desire his majesty would nominate 2 earles, 2 barons, who should bee sworne to expend the said treasure, as likewise that the clergy then were to give, with that of tunage and poundage upon the king's warrs, without the lord treasurer's at all medling with it; but soone after, the coumpt beeing cast up what was fit to alow these 4 for their continuall attendance on the service, "les cões se departirent de celle purpos, et prierent qe le dit haut tresorier ent fust recevour et gardein a l'oeps des dites guerres en manere accustumee."

36. In lawes, as there must bee a generall concurrence of three before any passe, so it is unlikely tyrany can creepe in unespied by some one [or] two of them, beeing both themselves and children to bee governed by those they assent unto; and, if any other court shall passe its bounds in exceeding what is made, or they have past (as sometimes may happen) what is indeede grievous to the people, either house, especially the commons, stand indewed with a full power to complaine at the next meeting, and have beene so rarely denied redresse, when made on just grownds, as I have never yet met with it. The 9 H. 6.[b] there was given to the king xx. shillings upon every knight's fee, which was found so grievous to the subject, by reason of many doubts and ambiguities in the act, as, 10 Hen. 6. his majesty, on the petition of the commons, was pleas'd to anul the said act.

37. The second payment of the 9. fleece, lambe, etc. given the 14 Ed. 3.,[c] was compounded for at 30[tie] thousand sacks of wool. It is true the commons knew they were to supply the king in his necessities, as themselves, the 2 of H. 4.[d] affirme; and, therefore,

[a] Rot. Parl. 51 Ed. III. n. 20, 21; n. 19.

[b] Rot. Parl. 9 H. VI. n. 15; 10 H. VI. n. 5.

[c] Confer. Rot. Parl. post med. Quadrages. 14 Ed. III. n. 6, cum 17 Ed. III. n. 27.

[d] Rot. Parl. 2 H. IV. n. 115.

when ordinary wayes were too scant, they had recourse to extraordinary, as Pole-mony, in Ed. 3. and Ric. 2. his raign;[a] to payments according to the value of men's rents, as in Hen. 6th's;[b] of stock, as in Ed. the 6th's;[c] but when the graunt made proved more burthensome then expected (one ende of parliaments beeing to provide how publique charges may bee imposed with least pressure to the people,[d]) kings have, either in whole, as Hen. 6., or in part, as Ed. the 6th,[e] remitted the same.

38. Onely, Henry the 5th and queene Elizabeth never (so farr as I have found) tooke any extraordinary leavy of their subjects; in which princes I doe not truly admire so much their heroick actions as the performing them with so slender supplies from their people; for, besides tunnage and poundage, first, as sir Ed. Cook[f] saies, given Hen. 5. for life,[g] he had no more in one yeare then two xvths, two xths, and sometymes but one xvth and one xth; a certaine signe that king, as in his affaires he most depended on his owne judgment (for wee never read of any favorite by whom he was swayed), so he had an especiall eye his treasure should bee so expended as nothing went to private purses; and for queen Eliz., her assistance to the Scots, Netherlands, and the French, is so fresh in memory I neede not say anything; besides her owne warrs with the greatest monarch of Christendome, fomented by a discontented party at home; yet she who found "res Anglicanas afflictissimas,"[h] would not endure unusuall wayes of raysing money be named, did, in her parliament 43 of her raign,[i] make it be told her commons, the French king did then owe her 1,300 thousand pounds; the low countries, 900 thousand pounds.

[a] Rot. Parl. 51 Ed. III. n. 19; 2 Ric. II. at West. n. 13, 14, etc.
[b] Rot. Parl. 14 H. VI. n. 12.
[c] 2 et 3 Ed VI. cap. 36.
[d] Rot. Parl. 11 R. II. n. 1.
[e] 3 et 4 Ed. VI. cap. 23.
[f] Inst. ii. p. 61.
[g] Rot. Parl. ap. Lecest. 3 H. V. n. 5; quere tamen, nam vide 21 R. II cap. 15.
[h] Camden's Annal. anno 1558, p. 5, edit. Elziverian. anno 1639.
[i] Ibid. anno 1590, p. 564.

39. For the moderne drawing, reading, and passing bills for lawes, they are all exactly set downe by Mr. Hackwell, in a treatis now in print; I can add nothing to what he hath so judiciously observed, onely there are two things well worthy the consideration: 1. whither the auntient course of the subject's complayning and expressing his griefes by petition to the parliament, were not a more speedy way of receiving remedy than now, when those they send are absolutely trusted both to shew what they are, seeke the cures, and prescribe the manner, as I may say, how the prince shall doe it; 2ly, when this auntient way of drawing lawes both out of the people's complaynt and the king's answer first began to bee disused; perhaps about the ende of Hen. the 7th, or Hen. the 8th's tymes: but of these, as beeing beesides my scope, I shall forbear to speak.

Of the privileges of the two howses of parliament, but especially in permitting no member or their attendance to bee arrested or molested by suite.

CAP. 15.

1. MANY tymes when I think of the two houses of parliament, their power and manner of proceedings, that of Sylla doth come in my minde, who so restreyned the carriage of the Tribunes in Rome, "ut injuriæ faciendæ potestatem ademerit, auxilium ferendi reliquerit."[a] So, it seemes to mee, with us the two houses had power to doe much good, but for hurt they had none at all, unlesse, in passing such lawes, themselves and posterity were to suffer under

[a] Cicero, de Leg. lib. iii. fol. 188 b.

as well as any else; for the lords, who reteyned the especiall markes of a court, beeing by the auntient custome of parlyament not to give judgment on any commoner, and the commons trusted with no poynt of judicature, it is not likely they would proceede against their owne members otherwise then by lawe, having no power at all to censure such as were none of themselves; and this freede the subject all-together from the feare of any arbitrary command whatever.

2. The commons, on the other side, had a large power in shewing what was ill, and procuring redresse by petitions, yet none at all, but preferring a new act, to punish otherwise than the law itselfe did warrant. And the lords, joyned with the king in poynt of judicature in such cases as were legally of their cognizance, had great opportunity of doeing good by giving free and liberall advise to his majesty, and concurring with the judges in opinyon; or, upon just and sownd reason in writs of error, dissenting from them, and approved by the king, had a great power in declaring the law. So that in short the commons had ever a power of remonstrating the people's griefs; the lords a right of keeping the judges in a streight course in point of judicature; and both, joyning with the king, of making a new law; in so much as, this commonwealth built upon these foundations, every one could in its proper sp[h]ear doe good, but all three must concur in altering any thing allready well establisht; it being most true of Sir Ed. Cooke that "leges figendi et refigendi consuetudo est periculosissima."

3. By all this it is manifest how much our auncestors did study in parlyament the advance of the publique, not the private benefit of themselves; neither doe I know any thing in all the constitution of that court can be thought possibly to look otherwise, except onely that priviledg for the members and their retinue (some dayes beefore the setting downe of it, during the continewance, and a while after the disolution) of not beeing at all molested by any suite or processe of law, now growne to that height as I have heard it maintayned that all persons ought not onely take notice of every member of the house of commons, his name beeing recorded in Chauncery, but that

it is a breach of priviledge to question him, though privately, upon any cause of suite, because his minde as well as body is to bee free.

4. In so much as if a parliament man should owe me money, hee may if hee will make payment of it to me, but I may not at all demand it for feare of interrupting his thoughts; and whether this priviledge bee broken, and how hee shall be punisht is the breaker of it, the house of commons (who cannot but bee thought parties) are the onely judges,—things so exorbitant in themselves, so inconsistent with liberty, so far estranged from all rules of government, so distant from the meanes to promote justice, as I have this chapter apart to consider—

i. What a privilege is.

ii. To what end graunted.

iii. On what motives this perticuler grew.

iv. How this priviledge became so grievouse.

5. It appeeres by the auncients, that any perticular law was by them termed a priviledge, "Vetant leges sacratæ, vetant xij. tabulæ leges privatis hominibus irrogari, id est enim privilegium;"[a] and Aulus Gellius,[b] yet more playn, "Non sunt generalia jussa, neque de universis civibus sed de singulis concepta, quocirca privilegia potius vocari debent, quia veteres priva dixerunt quæ nos singula dicimus," etc.; so that a private law, and a priviledge, was by them taken for one and the same thing. But in this sense wee doe now understand it, when wee use the word; for, though it bee very true that it is a perticuler law or custome, yet with us it imports some liberty or freedome which others have not, that such a law doth conferr upon either mannors, societies, or persons, and is therefore said to bee "Jus quod contra communem ordinationum tenorem, propter aliquam naturalis æquitatis rationem, certa constituentium auctoritate introductum est."[c] Such were those sundry immunities graunted by princes to the cleargy, to several corporations by charter, and some-

[a] Cicero, pro domo sua, n. 34, edit. Rob. Stephani.

[b] Noct. Attic. lib. 10, cap. 20.

[c] Schardius, verbo Privilegium.

tymes to perticular persons or familyes. None of which can bee of any validity but either by graunt or prescription: by graunt, are either by act of parlyament, as that of the 2 and 3 Phil. et Ma. cap. 15, that no purveyor shall take victualls within five miles of Cambridge and Oxford; or by charter, as the concessions of princes to the cinque ports, the exempting some persons from payment of subsidies, etc.; by prescription, as when some mannor or family doth prescribe for some custome or immunyty, as for free warren, etc. exemptions from payments of tolls, tyths, and the like.

6. For the second enquiry, why priviledges were at first graunted, there can bee no question but there were various motives that first produced them; as to the clergy, to shew the honour was carryed to holy orders, and for invitation and incouraging of learning; to corporations, for regulating their trades; to private men, and sometymes to townes, as the cinque ports, etc. "pro servitio expenso et expendendo;" and generally the graunt carryeth with it somewhat for the advance of the publique, as inriching the realm by the increase of trade, the strengthning of it by shipping, and the like.

7. And so for this wee speak of the parliament and all the kingdome having interest in a person. It is great reason, as my lord Dyar[a] hath it, the private commodity of any perticular should yeild to the publique; and so undoubtedly did, without any repining, whilst the shortnesse of parlyaments made all men see there was no further use made of that priviledge but the generall good; and therefore in [the] eldest records of that court of Edward the 3d's tyme there is very rare any mention of it, every one attending that they were called for so carefully it gave satisfaction to all.

8. But when the members of it grewe more intent on their private and lesse on the publique, that which was in the first practice a benefit became a burthen to the subject; and it being a rule of all priviledges that "ad bene vivendum dantur non ad delinquendum; illaque præsidio bonis contra improbos esse debere, non autem malis

[a] Fol. 60.

ad nocendum facultatem," [a] this began somewhat to bee changed; men, instead of beeing desired to bee parliament men, becoming suitors for places in the howse, and some by that meanes indeavouring to delay them to whom they stood indebted from atteyning their just debts, and other just suites; so that all process of law being stopt, not onely against any member of parliament, but as many as hee would protect and owne as his, this grew somewhat burthensome to the people.

9. And that priviledg which at first reached to noe other than those were of their necessary attendance in towne, as appears by the roll of 5^to^ Hen. 4.[b] where the commons claym it for no other but themselves, coming to parliament and returning from it, "et lour hommes et servants oue eux en le dit parlement," it is now extended to all their family wheresoever dispersed; insomuch as there cannot bee fewer then 4,000 by priviledge protected from all justice; for there beeing not lesse then 200 lords, none of whose familys in all parts can consiste of fewer than ten, one with another (doth no doubt of many more); and the nether howse beeing above 500, alowing them two servants a peece, there will bee 2,000 more, which makes up the full number; by which means a great part of the justice of England sleepes. Now whether any king sworn to doe equall justice without delay can graunt such a priviledge, or any court of justice receive it, I leave the examination to others.

10. But even this, in those elder tymes, was more tolerable; for, though in it selfe it might bee heavy, yet the short sitting of parliaments freede it in a great measure; and the knights and burgeses damnified recovering no more than his single damages in an ordinary court of justice, where his adversary was allowed his lawfull defence, were cause the party made no great matter of it; whereupon the commons desire, 5^to^ Hen. 4.[c] the offender might pay treble

[a] Consideratione di Padre Paulo, Venet. edit. 1606, fol. 31 b.

[b] Rot. Parl. 5 H. IV. n. 71; vide 18 Eliz. Feb. 22, Jour. des Co'es.

[c] Rot. Parl. 5 H. IV. n. 71.

damages, but the king stops it, affirming there was already sufficient remedy; and in a long petition, 10 H. 6.[a] they again propound many wayes for regulating that matter, and in the ende pray the party offended might receive only his double damages; but the king gave no other answear than "le roy s'advisera."

11. By all which it is manifest there is no further punishment added by any than the offence did at first carry with it; neither treble nor double damages at any tyme added; and the howses beeing not both judges and punishers of the offence, the subject did with more ease submit to what the law did inflict upon them; the manner being, that he who had neede of the priviledge of parliament did of course take an oath in Chancery that the party for whom such writ was prayed came up with him, and was his servant at the tyme of the arrest.

12. The 5 and 6th of Edward the 6th[b] made some addition, ordering that any burgesse requiring priviledge for himselfe or servant should upon declaration have a warrant signed by the speaker for obteyning the said writ; and then one William Ward, burgesse of Lancaster, who without privity of the house had tooke one out of Chancery, had his case committed to serjeant Morgan and others to search and certify the house, but what returne they made upon it I have not found; a certayne signe the said Ward had not done otherwise than former practis, for then it would certainly have beene remembered. And in those dayes if any were committed in the vacancy of parliaments and freed by priviledge, it was held reasonable he should bee returned to the prison whence hee was taken. 8 Elizabeth,[c] Gardiner, a burgesse, prisoner in the Fleete, desired his restitution, which the house thought fit to demand by the master of the requests and of the rolls from the lord keeper; who returned answer, hee might bee restored, with condition that upon prorogation or dissolution of that session he might eftsoone bee prisoner again.

[a] Rot. Parl. 10 H. VI. n. 39.
[b] Journal des Co'es, 5 et 6 Ed. VI. Febr. 22.
[c] Journal des Co'es, 8 Eliz. Oct. 8, 9.

13. And with this moderation things continewed till the 18 Eliz. Edward Smalley, servant to the burgesse of Grantham, being arrested, there was much consideration had touching his delivery. The 22 February,[a] the atturney of the dutchey, beeing one of the committees to whom the matter was referd, reported they found no president for setting at large any person in arrest by the mace, but only by writ; yet notwithstanding, upon the 27th of Febr. it was resolved, after sundry reasons not now found, the said Smalley should bee set at liberty by warrant of the mace, which was done accordingly.

14. Since which tyme the house of commons, who in former tymes did neither conclude what was the priviledge with the lords, and hearing the opinions of the judges of the realme and others learned in the lawes, and relinquisht all punishments to the courts of common law, have not onely resolved themselves on the breach of them, but, 23 Eliz.[b] first appoynted a committee to examine the returnes of that house; and the 27 Eliz.[c] another for examining the state and manner of serving processe upon any member of that house; both which committees beeing joyned 35 Eliz.[d] and ever since continewed to this day, have so far inlarged the extent of their priviledges and the punishing of them, as it is now commonly said no person knowes what is not a breach of them, if it have any reference to a parliament man; and no man but may with more ease satisfy the rigor of a penall law than the censure of beeing a breaker of them; and, beeing questioned, may think he fairly comes off, if hee speede no worse than paying double or treble damages,—the most was ever desired, yet never condescended unto.

15. It is not impertinent to bee heere remembred, that in queene Mary's dayes G[a]bryel Pleddal, a member of the house of commons, beeing bound by recognizance in the star chamber to appeere beefore the counsell within 12 daies after the parliament, the commons

[a] Journal des Co'es [18 Eliz.], Febr. 16, 20, 21, 22, 27.
[b] Journal des Co'es, 23 Eliz. Feb. 24.
[c] Ibid. 27 Eliz. Feb. 13.
[d] Ibid. 35 Eliz. Feb. 26.

holding it a breach of their priviledge made complaynt therof to the upper house upon the 6th of December by Mr. Comptroller. The lords desired six of the commons might bee sent up to confer with their lordships; who at their returne reported the chiefe justices, master of the rolls, and serjeants, did cleerley affirme the recognizance was no breach of priviledge, with which the commons seeme satisfyed; but on what they grownded this opinion the journall is silent; it is probable, beecause there was a sufficient time after the ende of this parlyament for the gentleman to appeare.

16. But at least since 18 Eliz.[a] the commons have assumed that poynt of judicature wholy themselves; and the 29 Eliz.[b] Mr. Martin, of that house, beeing arrested by one White above 20 daies beefore the beegining of the parlyament, they resolved hee was to bee allowed priviledge; and the reason why there given makes it yet more arbitrary, for it is said the principall cause why Martin had it was, that in a former session of the same parliament, when hee came to London, White had arrested him, and then knowing him returned a burgesse discharged the arrest; yet after, hee coming to serve, the second tyme caused him to bee arrested, which the house tooke in evill part, and thereupon judged him to be discharged of it: which shewes it so doubtfull as no man can conclude himselfe free from offence, when sometymes above 20^{ty} dayes shall bee breach and 12 none, when not the tyme but the person's comportment before the meeting shall direct the judgment.

17. Indeede in succeeding tymes that committee of priviledges and election, now joyned in one, hath gayned the scandalous name of the Committee of Affections; and I remember myself to have heard parlyament men excuse some partiality used in that place, by affirming it the onely perticular one friend could doe another pleasure in; which is true, there beeing nothing but the election of their members the house of commons exercise any judicature in, nor wherin they can shew themselves to bee partial.

[a] Journ. des Co'es, 18 Eliz. Feb. 22.

[b] Journ. des Co'es, 29 Eliz. March 11.

18. But as it is very cleere in former tymes such as offended in that kind were left to the ordinary courts of justice,[a] and to recover their dammages assest by a jury, so it is likwise that the howse of commons did not farthur intermedle than by makinge lawes to regulate elections and punish the infringers of their priviledges; of which such petitions as are yet extant of the tymes of Ed. 3., Ric. 2., Hen. 4., H. 5., H. 6., are sufficient witnesse; and, whilst this graunt was held to bee meerely from the goodnes of kings, if too heavy, it might, perhaps, have beene limited or qualifyed, so as the parliament might receive what was fit, yet the subject not bar'd of the benefit of law, which his majesty was by oath to mayntayn him in.

19. But now, though that concession bee demanded by the speaker from the king at the beginning of every parliament, and never (so far as I can find) but with the admonitions, if not restrictions, that great care bee had it bee not for the maintenance of injuryes, or that under collour of it no man's ill-doing bee protected, etc. yet it is generally held every member, their servants and attendance, are so free the king alone cannot intermeddle in it; that the house of commons (who may bee thought in some measure parties interested) are the onely judges and punishers of such as offend; that to deny this, or by reason oppose it, and shew the unreasonablenesse of it, is a great offence, and a diminution of the rights of that howse, which no trwe English commoner ever will or can labour to doe. For my part, I know the blessings this kingdome hath received by parlyaments, and I assure my selfe that, under God, they are, and ever have beene, the greatest preserver of the people's liberty; yet I can not but wish this might be reduced to the first institution, and that the priviledges of the representers may not eat up the liberties of the represented. I remember the law of Gratian, anno 383, commands "Privilegia omnia paucis concessa personis in perniciem plurimorum in irritum devocentur."[b]

[a] Vide 5 H. IV. cap. 6, n. 78, Rot. Parl.

[b] Cod. Theod. Si per obreptionem fuerint impetrata, leg. unic. lib. 11. Tit.

What things parlyaments have not usually meddeled with.

CAP. 16.

1. THE power of parlyaments is with us so transcendent, as king James[a] doth remember a saying of my lord treasurer Burghley, that hee knewe not what an act of parliament could not doe in England. And, indeede, how can it bee otherwise? for that court, beeing so high as it makes law that which is not, and that which is it abolisheth, and man having found nothing to guide his actions by but law, how can there bee any thing of greater auctority than what, upon mature and sound advise, passeth from it?

2. Yet the intent in forming of it beeing onely the good of the people, our auncestors, finding some things unfit for that assembly to deal in, have left us their prohibitions, rather as directions not at all to meddle with them, than that if a parliament should, what was concluded by the generality in it were invalid; for noe law can bee so strong but that court may repeal it, and, setting themselves at liberty, deal in whatsoever they are most restreyned in; as appeeres playnly by severall records, Rot. Parl. 11 Ric. 2. n. 23, 38; 21 Ric. 2. n. 20; 1 Hen. 4. n. 143, cap. 3; 2 H. 4. n. 114, cap. 22. See Cook, Inst. 4, p. 42.

3. But no meeting of men beeing possibly to bee had that will have allwayes one intent, ever one aime; and no greater servitude than "cum jus sit vagum et incertum" to live under an arbitrary government, the wisdome of this state hath beene to provide not so much for the continewance of one, (which, if it did erre, might bee apt to persist in making good what they had done,) as to have often parlyaments, the latter ever inabled to correct the former; and, therefore, in elder tymes wee find them seldome held by prorogation or adjournment, unlesse it were for some very small tyme, as of Christmasse, Easter, or such like beeing at hand, and what was

[a] His speach in the Star Chamber, 20 June, 1616.

moved could not receive so sodayn a conclusion: such seemes the 4 and the 14 Ed. 3. and some others.[a]

4. Next, the constitution of it is such that, though the parliament have very ample auctority in making lawes, yet not so in interpreting of them made, that beeing left to the judges; and therefore the two houses can not question any man for his freehold.

The 20 Ed. 3.[b] a parliament was held by Lionel Gardein d'Engleterre, etc. in which the commons petition, all monks alyens should depart the kingdome before Michaelmas; that such as stayd beeyound that tyme might bee out of the protection of the common law, their houses seized into the king's hands, and English placed therein by advice of the ordinary, etc. But to this the answer is, they were spirituall persons in their houses by institution which could not bee tryed in parlyament; as for their lands, they were seized to the king's use, and no man could take them thence without the king's privity.

5. Which, if I rightly understand, is no other than what the commons petition, the 10 H. 6. informing the king "qe diverses de vos lieges ore tard autrement qe n'ad este use devant ces heures, ount estes empeches si bien en parlement come en autres courtes et conseils, de diverses matiers et articles touchantz lour frank tenementz et hereditamentz par lour adversaires, desirantz qe les ditz lieges feussent examinez sur tieux matiers et articles, l'ou les ditz matiers et articles ne sont examinables par la cõe ley de la terre, ne par nul estatutz devant ces heures faitz; de considerer qe si tieux examinations soient sufferts, qe ceo turneroit en overt desheriteson de vos lieges, et aussi qe tieux examinations sont expressement encontre la cõe ley et les estatutz de la terre;" and doe therefore beeseech his majesty "sur ceo d'ordeigner, par auctorite de cest present parlement, qe nul personne, de quel estat ou condition q'il soit, en temps avenir al suite de roy ne de nul autre soit mis ou arte pur estre examine en

[a] Rot. Parl. post fest. Stæ. Kat. 4 Ed. III. n. 16; et post med. Quadragesm. n. 28.
[b] Rot. Parl. 20 Ed. III. n. 30.

parlement, ne en nul autre court ne conseil, de nul chose ou matier touchant son frank tenement ou enheritement, en ascun cas, pur Dieu et en œuvre de charyte:" which in effect is no more than the resolution of the chiefe justice, 32 Hen. 6. that actions at the common law bee not determined in the high court of parlyament.

6. This petition of the commons I have the more largely repeated beecause it seemes to me many remarkable observations may bee drawne from it: as, 1. that in those dayes some men did indeavor to bring into parliament and other councells matters of privat concernment; 2. that it was done by such who hoped to carry in them by favor what they could not at the common law; 3. an expresse resolution that such things were not examinable in that court; 4. that the proceedings in them were regulated by the custome of the realm, that is, the common law; 5. the consequence, that if such proceedings were permitted they would turne to the utter disinheriting the subject; from whence must ensue the subverting both of parliaments and other courts, by introducing an arbitrary way of governing.

7. It is true to this petition, which seemes to have past both houses, the king answers "le roy l'advisera," as indeed perhaps it went a little too farr in desiring no man might bee examined in any other court or councel, etc.; but if what was desired in it were for the most no other than the common law and custome of parliament beefore, which that of the chiefe justice seemes to confirme, with the continewed practice ever since, I see not why wee may not say the generality in it to bee law: viz. that the two houses are not to meddle with any thing tryable by the common law, unlesse such as are by writs of error out of some courts in a legall and orderly way brought into them, and by that means become proper, and of the cognizance of the upper house.

8. For, if otherwise, that court deals not with it; of which there is a strong president, 50 Ed. 3.[a] when Henry bishop of Norwich

[a] Rot. Parl. 50 Ed. III. n. 48.

sued to have an error in the court of common pleas reversed in parliament, "a quoy luy estoit finalement responduz par com'e assent de toutz les justices, qe si errour fust aucun a fin force par la loy d'Engleterre, tiele errour fait en cõe bank doit estre amende en banke du roy; et ne doivent nuls tielx records et proces faitz en le cõe bank estre fait venir en parlement immediate par voi d'errour, einz en le bank du roy, et nul part aillours; mais si le cas avenoit qe errour fust fait en bank le roy, adonqes ce serroit amendez en parlement et nennye devant."

By which record it is manifest things came not thither "per saltum," and the manner of proceeding in that court is as well regulated by "par la loy d'Engleterre," the custome of parliament, as the king's bench or common pleas.

9. From all this I gather, as is before intimated, that what could receive an end in a court of common law was not at all brought thither; which I conceive is made good by severall parliaments, at the beginning of which the king causes them to bee told one reason of calling it is, "qe ceux qe soy voillent pleindre en cest parlement de chose qe ne poet bonement estre redressez par la cõe loy, baillerent avant lour petitions,"[a] etc.; from whence wee must conclude one cheife end of their meeting to bee the redresse of those things the common law could not cure; and such are they which are remembred 36 Ed. 3. and in other acts commanding their calling once a year.

10. Now though this beeing by the common law, is enough for debarring the two houses from entring upon any thing of private concernment, or which comes not into it in a legall way, yet, experience having made men see how unfit it is for that court to meddle in perticuler causes, hath expressely taken by act of parliament some cases out of their jurisdiction. In the memorialls yet remaining of auncient parliaments, the examples are very rare of any man in

[a] Rot. Parl. 11 R. II. n. 1; 9 R. II. n. 5, et plurima alia.

it proceeded against; for, though Simon de Bereford, Matravers, and others, did dye upon a judgment in parliament,[a] yet there was then an expresse law made what was done should not bee drawne in consequence. 50 Ed. 3.[b] Alice Peres and others were accused in parliament, but that I conceive was by act of parlyament, in which their power was never doubted to bee absolute.

11. The 10 Ric. 2.[c] the commons formally impeached Michael de la Pole, and shewed some passion in the poursuite, which the next year[d] following produced that great appeal wherin the duke of Glocester, constable of England, Henry earle of Derby, Richard earle of Arundel and Surrey, Thomas earle of Warwick, and Thomas earle marshall, "a nostre tres excellent et tres redoute seigneur le roy et son conseil de cest present parlement monstrent;" and then shew how they had formerly at Waltham Crosse appealed Alexander archbishop of York, Robert de Veer duke of Ireland, Michael de la Pole earle of Suffolke, Robert Tresilian justice, and Nicholas Bramber knight of London, before the archbishop of Canterbury and others, and were by the king adjourned to this parliament; and after, in the same roll, there were severall empeachments by the commons against sir Simon Burley, sir John Beuchamp, Sir John Salisbury, Sir James Barners.

12. Upon which appeale and accusations some sufferd, others were pardoned of their lives, but adjudged to prison, much against the king's will, who, now weaker than the lords, thought fit to expect a more opportune advantage, which hee tooke in the 21th year of his raigne, disanulling all had past in the 11°; and then another appeal was brought against those lords whom 11 R. 2. had justifyed. It is not needefull to what I treat of to relate all then passed; it shall suffice, these two appeales, so contrary to each other, made the world see, such proceedings beeing in parliament, no body could bee secure

[a] Rot. Parl. post fest. St. Katherinæ, 4 Ed. III.
[b] Rot. Parl. 50 Ed. III. n. 45.
[c] Rot. Parl. 10 R. II. n. 5.
[d] Rot. Parl. 11 Ric. II.; et apud Hen. Knighton, col. 2714, etc. 2715.

longer than they had the plurality of voyces, and did thereupon produce that law, 1 Hen. 4., that all appeales of things done within the realme should be tryed and determined by the good lawes of the realme, and of things done without the realme by the constable and marishall of England, and none to bee pursued in parliament; and it is observable the commons, on whose petition this law was made for not receiving accusations in parliament, doe add, "come ad este fait et use auntiennement en temps de vos tres nobles progenitors," etc.; shewing this act to bee no other than a restitution of the common law.

13. There may bee heere some question what an appeale is, so often in these tymes mentioned; some conceive it to bee when any lord or lords accused others out of parliament to the king, and his majesty deferred the tryall to the next parliament; which in part may bee true, but not in whole, for there are some proceeded against by way of appeal or accusation there, not at all mentioned, for ought I find, before, as sir Simon Burley, 11 R. 2. So far as I have observed, that which, arising from the commons, is called an empechment, when begun in the lords house was termed an appeale; but I conceive the matter to bee in effect the very same, the word "to appeal" signifying no other than to accuse; in which sense I remember it is in Livie,[a] "Blasius de proditione Dasium appellabat;" and sir Ed. Cooke[b] accordingly interprets "appelum" to bee "accusatio;" so that an appeal in parliament is no other than an accusation in parliament.

14. If it bee objected that then all empeachments made by the commons are by the statute of 1 Hen. 4. taken out of the parlyament, I cannot deny but for my part I did ever think they were, at least those which concearne fellony or treason, which was what the commons then desired. If any urge it to bee very unlikly the commons, 8 Hen. 6.[c] would desire the continewance of that law, with

[a] Livy, lib. 26, fol. 233 d.

[b] Inst. i. fol. 287 b.

[c] Rot. Parl. 8 Hen. VI. n. 38.

this explanation, that all tryalls within the kingdome "soient suez, triez, et terminez par la cõe ley de dit royalme, devant nostre seigneur le roy en son bank, ou autres ses commisioners, et neny devant conestable et marshall en nulle manere," and yet the 28 Hen. 6. empeache the duke of Suffolk, had it beene [by] that law prohibited:

15. For answer to which, it may bee observed that, from the 1 Hen. 4. to the 28 Hen. 6. there is no example of any person beeing accused in parliament, nor from the 28 Hen. 6. to the 18 Jacobi; and for that of the duke of Suffolk, the commons entred upon it on the petition of the duke of Suffolk himselfe; neither did the duke put himselfe upon his peerage; but in it the king, by way of submission made by the said duke, nothing reporting himselfe to the advise of the lords nor of parliamentary judgment, imposed on him the sentence of bannishment, as the king's declaration and the lords' protestation shewes; none of which had any conformity with the formalityes in impeaching, appealing, or judging used formerly in parliaments beefore that statute, and enough shewe this proceeding now had no correspondency with the judgment given by the king and lords against his grandfather, Michael de la Pole, 10 Ric. 2.

Hee that would see more of appeals may reade Bracton, lib. iii. de Corona, fol. 145 b.; Britton, cap. 22, fol. 38 b., lib. ; Fleta, lib. iii. cap. 31, 34, etc.; Cook, Inst. i. fol. 287 b. Inst. ii. p. 317; Stamford, Ples del Coron, lib. ii. cap. 6, fol. 58 b.; Spelman, Glossar. verbo Appelum.

16. The subject of this kingdome beeing vexed by removall of suits proper for the common law into courts of equity, had in severall parliaments[a] petitioned against those courses: but small amendment came; for, after judgment in the case, they would sometymes fly to the king, otherwhile to the parliament, and delay their adversary from receiving the benefit of law; against which the commons made two petitions, 4 Hen. 4.[b] and obteyned that law, cap. 23, that after

[a] Rot. Parl. octav. Purific. n. 16; et fest. St. Hill. n. 19; et cap. 4, 25 Ed. III. 42 Ed. III. cap. iii. n. 12; Rot. Parl. 47 Ed. III. n. 34.

[b] Rot. Parl. 4 H. IV. n. 78, n. 110.

judgment in any of his majesties courts, the party should bee at peace tyll it were reversed by writ of error, or atteynt; which was questionlesse no small limitation of the parliament.

17. After this, for ought I have met with, the people were prety quiet, the parliament not at all medling with things of the common law, or drawing to it what was there determinable, tyll king Hen. the 8th, with whom it was not a thing unheard of to condemne by act of parliament,[a] without bringing the person to answer, or otherwise out of prison but to the scaffold; and this, as it was practised in his tyme, so was it not without example in his sonne Ed. the 6th's;[b] for in the atteindor of his unckle the lord admirall Seymor, March the 2, the house of commons (for the journall of the lords' house is lost, so wee know not how it past there) resolved, The evidence against him should bee orderly heard, and to require the lords which affirme it may come into the house of commons, and declare it *viva voce;* but the 4th of March the master of the rolls declared his majesties pleasure to bee that the admirall's presence was not necessary in that court, and therefore not to bee there; yet if the house would require the lords to come to satisfy them, for evidence against him, the lords would. And the same day the bill was passed against him, without, for what appears, [his] beeing ever heard, or the lords cominge downe unto them. So that our historians[c] seeme truly to relate, who informe us he was condemned in parliament without ever coming to his answer. These carryages no doubt after produced that excellent clause in the statute of queene Mary,[d] that all tryalls heereafter to bee had, awarded, or made for any treason, shall bee had and used onely according to the dwe order and course of the common law; which, if it doe not take all tryalls of treason out of the cognizance of parliament, doth, to my understanding, at least limit them to bee after no other manner than the course of the common law.

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[a] Cook, Inst. 4 p. 47.
[b] Jour. des Co'es, 2 Ed. VI. March 2, 4.
[c] Stow, anno 1548-9, 9, Jan. 16.
[d] 2 et 3 P. et Mary, cap. 10.

THUS have I shewed on what solid grownds the government of this kingdome hath beene built; that neither the monarchy might introduce a tyrany, nor yet fall into a popular or anarchy; but because the greatest danger of these hath beene the feare of tyrany, and princes falling into that doe sometymes loose both themselves and crowns, I set this as a conclusion apart, to shew a king hath no so great enemyes as those who by flattery teach him to think his power wholy above law. I know how easy it is for greatnesse to bee seduced that way; the poet's observation was, "Nihil est quod de se credere noluerit, cum laudatur diis æqua potestas;" [a] Seneca most truly, "Quis sibi verum dicere ausus est? Quis non inter laudantium blandientiumque positus greges, plurimum sibi ipsi assentatus est?" Princes are seldome ill having good instruments about them. The philosopher [b] said, of all tame beasts the flatterer was the worst. Sir Ed. Cooke hath made one whole chapter against them,[c] shewing the miserable endes such as went about the subversion of the law, through the favour they held with princes, have incur'd.

It is true, as he judiciously observes,[d] parliaments and common law are the principall means to keepe greatnesse in order and due subjection, and therefore hated by those who would have kings set no bounds to their wills; yet even them I take to bee lesse dangerous flatterers than they who, as not looking at it, know how and where to wound the law, and by stepps to winne upon the people's liberty; who, as they are more cunning, so are they not so easily discerned; but because sir Edward Cooke hath so largely allready discoursed of them, I have heere no more but to refer the reader to his chapter, he having so well prevented me in setting that with which I thought to have concluded, by adding heere somewhat more than I shall therefore now neede.

[a] Juvenal, Sat. 4, verse 71.

[b] Apud Plutarq, Banquet de Sept Sages, prope initium.

[c] Inst. iii. cap. 99, p. 207, 208. [d] Inst. p. ii. 626.

NOTES.

P. 7. *To show his care was the defence of the people.* This might be the pretext; but in fact the addition of the tribunitial to the consular power, by uniting all the authorities of the state, in Augustus, constituted him the unlimited ruler he was. However, his great object was to secure his own personal safety against such conspiracies as that which cut off Julius. The person of the tribune was sacred, he was under the special protection of the gods, and those that offered violence to him were accursed. Hence the importance which Augustus attached to the possession of the tribunitial office.

P. 13. *But of those times we have so little knowledge.* See the editor's "The Saxons in England," book ii. chap. 7.

P. 14. *Yet in the end possessed themselves of the whole.* He means under Cnut and his family, from A.D. 1017 to 1041.

P. 20. *All persons sweare allegiance to him.* This was literally done at one time, by all persons who had reached the legal age of 12 years. In 801, Charlemagne caused such an oath to be taken to himself as emperor: and similarly our own kings previous to the Conquest. See "The Saxons in England," book ii. chap. 2, p. 35. And from this, coupled with the king's oath at his coronation, was in later times implied the contract between the king and the people; he engaging to maintain their liberties, and the law under which he was made king; they consenting on such conditions to be ruled by him, and that he should become the depositary of that authority of the whole state which must necessarily be represented by a smaller body than the whole people.

P. 21. *Holding one once a year.* See chap. 13.

Ibid. *He alone did coin money.* This royal prerogative nevertheless was at an early period granted very liberally: and where there are no such institutions as country banks, it seems difficult to avoid this course. During the wars of succession between Hen. II. and Stephen, every castellan (and there were more than eleven hundred of them) took upon himself to coin money. There were as many kings as castellans, says a chronicler, for each had his mint and courts of justice. See Walt. Hemingb. i. 74; An. Trivet, 1147; Rog. Wendov. ii. 256.

P. 21. *War and peace.* No doubt these are royal prerogatives, and an officer's commission is directed to him by the sovereign, that is, the head of the executive: without this he may be dealt with as a pirate, robber, and murderer. But standing armies, officered by commissioned persons, are very different from an armed militia, called out by proclamation, and commanded by certain official functionaries. They are also very different from forces serving by their tenure, and in the array of a feudal lord. Since the commons have really obtained the sole disposal of the public money, and the ministers are less ministers of the crown than of the people, through the house of commons, these royal prerogatives have ceased practically to exist. And this is eminently the case with the second, or that of making peace, which is in fact of far greater importance than that of making war. However, no important case of war can be shown throughout our early history to have been undertaken without the consent of parliament. The crown sends down a message to inform the faithful commons of the causes which enforce upon it the necessity of declaring war, and calls upon the commons to support the war with subsidies, and so on. The amount of these is left to the commons. But it is to be remembered that an army in old times was not all paid out of such funds as it now is. An Anglo-Saxon king could call out all the freeholders, who were bound to military service as holders of a free hide, and must appear in arms, with supplies for a certain time: moreover he always had a *comitatus* of his own, or standing army, however small. A feudal king could also summon his tenants *in capite*, and they their aftertenants to do service for their fief. This sufficed for trifling cases: national wars however brought greater expenses: transports must be supplied, artillery provided, mercenaries hired; and numberless details were necessary which rendered an appeal to the people indispensable, inasmuch as the king's treasury was not equal to the cost, and the wars of kings could generally be made to appear the benefit of their people. At present the army, like every other institution, is supported entirely by the commons, and there are neither freeholders subject to the *hereban* or *fyrd*, nor tenants holding by knight's service. Hence the ordnance, army, and navy estimates are a regular part of the budget, and if the crown finds itself compelled to declare war, it must depend upon the house of commons entirely for the means of carrying it on. And to the same house the king's ministers, who for all practical purposes are the king, are responsible for the declaration of the war, and the conditions on which peace shall be made.

Ibid. *Immediately from God.* That is, he has no feudal superior: for the usurped claim of the pope in the cases of Henry II. and John, not being allowed by the estates of the realm, is no exception. But the king cannot himself settle the descent of the crown; and indeed he holds it under God and the law, by which he is king. In like manner he cannot put his crown in subjection to any other potentate, or of his own will part with any of its privileges and prerogatives. So that, although it be true in some sense, that he holds his crown immediately from God, and without any dependence on any person whatsoever, yet he holds it in accordance with the ancient law and established customs of the land; and he must deliver it to his successors with the same conditions as those under which he himself enjoys it. And if he attempt of his own arbitrary will to break through

those conditions, and to rule contrary to the ancient and established laws of the realm, he is taken to have *ipso facto abdicated* the crown. In this case, if his people choose to claim the forfeiture, the house of commons will vote that "The king, having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people; and having violated the fundamental laws, and withdrawn himself out of the kingdom, hath *abdicated* the government, and that the throne is thereby become vacant." This differs in form, though not in fact, from the mode adopted in the case of Edward the Second. See Tind. Rapin, i. 401 sq. and it is to be regretted that we have not the exact ceremonies in the deposition of Sigeberht and Eádwig of Wessex, and Alchred of Northumberland. See "The Saxons in England," ii. 219 seq. It is nevertheless very certain that the Saxons were not at all hampered by the many considerations and legal refinements which it was necessary to take into account at later periods.

P. 23. *Historical law.* Since the settlement of the law, sir Edward Coke's dictum has great weight. But what is to be done when we come to reason upon times whereof no legal record itself exists? And how are we really to know what the common law is, without tracing it in what the chroniclers have delivered down to us? No one will argue that there was no law before the earliest recorded statutes: and how are we to learn what this law was? What rolls of parliament, or records of trials, have we to illustrate the times of William the Conqueror and Rufus? Moreover, the history of the time when any particular principle became recognized as law, and as such adopted by the judges, is generally of the utmost importance, to explain the law itself. What, for instance was the law of high treason before the 25 Ed. III.?

P. 30. *Tytle of conquest.* This is in general true: but we must not forget that Cnut maintained a very strong force of *húscarlas*, or household troops; a standing army of his own, principally made up of Danes. See Thorpe's Lappenberg, ii. 202. "The Saxons in England," ii. 118.

P. 31. *Suppositious child.* "Haroldus vero dixit se filium esse Canuti regis et Northamptunensis Alfgivæ, licet id verum esset minime; dicunt enim nonnulli filium cuiusdam sutoris illum fuisse." Flor. Wig. an. 1035. Harold's birth was certainly very obscure. See Chron. Sax. an. 1036. "Some said of Harold that he was son of Cnut, and Ælfgyfu, daughter of Ælfhelm the ealderman, but this seemed quite incredible to many. Nevertheless, he was full king over all England."

P. 32. *Filius bubulci.* This is extremely improbable, even if we attribute to the father what is here said of the son. Wulfnóð, Godwine's father, was called the "Child" of Sussex, a title not given to any but those of high birth. The report of Godwine's low birth seems only part of the calumnious attacks upon Harold himself. We know very little indeed of Sussex: but whatever we do know is consistent with the supposition that Wulfnóð was descended from a noble family there.

P. 33. *Sojourner in Normandy.* This is in every way improbable: Eádweard, while in Normandy, could not have the slightest expectation of ever being king of England. It was Godwine's influence and eloquence which obtained the crown for him from the people, upon the death of Hardacnut. But it signifies little, for Eádweard could as little leave his kingdom to Harold as he could give it to William. The witan of England, feeling the necessity of a strong ruler, elected Harold, a man eminently noble, and of approved merits as an administrator and general. The Saxon Chronicle says "all the people" elected Harold; Florence tells us the election was made by all the *primates.*

P. 34. *Principibus non placuit.* This does not appear to have been the real ground why this grant was avoided. Egberht disputed Baldred's right, because it had been exercised while that prince was in flight before himself: consequently while not in possession of the royal power, or exercising it in a legal manner with the consent of his witan. Egberht probably denied that Baldred, when driven out of Kent, could legally make any grant in that kingdom. "Sed a quibusdam dictum est, quia cum recta libertate facta non esset (*i. e.* donatio) quia in fugatu eius conscripta et concessa fuisset." Cod. Diplom. No. 240.

P. 45. *Principality of Flanders.* See the history of this transaction in Warnkönig. Hist. de Flandre, by Gheldolph, vol. i. p. 179.

Ibid. *Fealty to his son.* See Rog. Wendov. ii. 192. "Anno Domini MCXVI. convocatis comitibus et baronibus, cum clero totius regni Angliæ, tenuit rex parliamentum suum apud Salesberiam, xiv. kalendas Aprilis. Ubi jussu regis Henrici fecerunt prædicti magnates homagia filio suo Willelmo et eidem fidelitatem juraverunt." Walt. Hemingb. i. 42. "Filium habuit rex Henricus ex Matilda, nomine Willelmum, dulci spe et ingenti cura in successionem educatum et provectum; nam et ei, vix dum duodecim annorum esset, omnes liberi homines Angliæ et Normanniæ, cujuscunque ordinis et dignitatis, cujuscunque domini fideles, manibus et sacramento se dedere coacti sunt." Malmsb. ii. 651.

P. 47. *Only three bishops.* At the same time, the three most important prelates in the realm; viz. the archbishop of Canterbury, the bishop of Winchester, and the celebrated Roger bishop of Salisbury, one of the most influential as well as wealthiest subjects. But Malmsbury's account, which Twysden follows, is not entirely consistent with that given by the author of the Gesta Stephani, who says: "Archiepiscopus regem eum in Angliam, et Normanniam, cum episcopis, frequentique qui intererat clericatu, sacravit et inunxit." Gest. Steph. p. 8. The absence of the principal laity which might be inferred from these words, is mended by the immediate adhesion to him of the people generally, especially that of the prudent and good Robert earl of Gloucester, an illegitimate brother of the empress. "Omnes ferè primi totius regni laeti eum et venerenter recepere, ... liberali cum jurejurando, præmisso hominio, ejus sese servitio ex toto

manciparunt." Gest. Steph. loc. citat. Even Trivet, who calls his accession "usurpatio injusta," says, "A Willelmo Cantuariensi archiepiscopo, annuente Saresburiense Rogero, in præsentia prælatorum et procerum . . . . . solemniter coronatur." An. 1136. Still in this case it is not to be denied that Malmsbury's authority is of very great weight.

P. 52. *From which custome.* The custom of riding progress is far older, and a part of the duty of every Teutonic king. See "The Saxons in England," i. 154; ii. 59.

P. 54. *Heyre after him.* "Condiximus inter Arthurum egregium ducem Britanniæ, karissimum nepotem nostrum, et hæredem si forte sine prole nos obire contigerit, et karissimam filiam vestram, matrimonium in Christi nomine contrahendum." Fœdera, an. 1190, i. 66. Richard, however, appears to have changed his mind on this subject: "Prolem non habens, Joannem fratrem suum, regni ac terrarum suarum omnium, testamento suo designavit heredem." Trivet, an. 1199, p. 161. It is of course out of the question that Richard could *devise* his kingdom either to one or the other, nor in the law of those times is it at all clear that Arthur was nearer than John to the succession. However, the English barons settled the matter by crowning the latter.

P. 56. *Made away his nephew Arthur.* This is very far from being satisfactorily proved: indeed is to a great extent disproved by the very assertions of the authors who most boldly charge him with it. How differently the English writers thought about it may be seen in Rog. Wendover, iii. 170; Trivet, an. 1203, p. 171; Walt. Hemingb. i. 232; Coggeshal, an. 1203; Rec. Hist. France, xviii. 96 seq. Mr. Hamilton has collected most of the accounts in a note to his edition of Hemingburh, i. 232, note 2. But the most convincing proof of his innocence is the absence of any direct charge made by any of his numerous contemporary enemies: for the pretended trial by his peers, in France, when John not appearing was condemned *par contumace*, is of no authority whatever.

Ibid. *As a fee of the church.* We cannot well refuse to credit Henry's own letter, which see in Fœdera, i. 35; and Trivet, an. 1173, p. 76. William the Conqueror himself is said to have proposed to the pope to hold England of him: and it is very probable that Henry, while disturbed and distressed by Becket, may have made some private admission to that effect. It is to be remembered that, at this very time, the pope was making claims of this kind, and that he had told Frederic of Hohenstauffen that he held the empire as a *beneficium* or fief from the holy see. But it is equally certain that Henry never formally did homage to the pope for his kingdom, as John did: nor could he put himself into the position of a feudatory, without the consent of his estates, which he assuredly never had for any such purpose.

P. 66. *Objections against Richard the Second.* The tenth article exhibited against this prince in A.D. 1399, runs thus: "That, though the crown of England, the rights of the

crown, and kingdom itself, have been in all times so free as the pope or any other foreign power had nothing to do in them, yet the said king, for the confirming of his erroneous statute, supplicated the pope to confirm the statutes made in his last parliament; wherupon he obtained his apostolic letters or bull, wherin were contained grievous censures against all such as should presume to contravene them. All which things are known to be against the crown and royal dignity, and against the statutes and liberty of the kingdom." Tindal's Rapin, i. 473.

P. 67. *To have brought in the civil lawes.* The passage referred to in Fortescue is as follows: "I see plainly, quod the prince, that in the case wherein you have nowe travayled they (*i. e.* the laws of England) have the pre-eminence above all other lawes of the worlde, yet wee have hearde that some of my progenitours kings of Englande have not beene pleased with theire owne lawes, and have therefore gone about to bring in the civile lawes to the governement of England, and to abolishe theyr owne countrey lawes. For what purpose and intent they so dyd, I much marveile." Fortesc. Commend. cap. 33. It is possible that there may be some reference here, not to William de la Pole, but to Humphrey duke of Gloucester, who, *being skilled in the civil law*, was accused of sharpening the severity of punishment against the offenders. "Not longe after divers noble men conspired against the duke, and appeached him of sundry criminal offences, but principally for that he had caused certaine condemned persons to be executed more greevously then the lawe of Englande appoynted: for the duke being a severe man, because he was skillful in the lawe which is called civill, and caused malefactors to be sharply corrected, procured thereby against himselfe the hatred of ungratious people, who feared due punishment for their mischievous and naughtie factes." Polyd. Virg. bk. xxiii. Camd. ed. p. 72. I cannot call to mind any other instance to which reference might be intended; but sir John Fortescue could not possibly be misinformed on such a subject, and so recent a case as this was must have at once occurred to him.

P. 68. *I confess it hath often troubled me, etc.* Twysden naturally found it difficult to understand how kings should be elective, or how the phrase "electus in regem" should have continued to be the legal expression. But there can be no doubt that royalty among the Saxons was elective, although the persons qualified to be elected were confined to certain families. There is more of this even after the Conquest than appears at first sight. Those who preferred John to Arthur, Stephen to Maud, and Henry the First to Robert, would hardly have taken any one not of the blood royal, though they exercised a choice as to the prince they would have. I do not think De Montfort could have made himself king. The examples in Saxon history are very numerous, and we may be certain that a genuine election by the people took place at the death of every king. A Saxon homily not much earlier than the Conquest expresses the rule thus: "No man can make himself a king; but the people have the choice to elect him king who is agreeable to themselves. But after he has been consecrated as king, then has he power over the people, and they cannot shake his yoke from off their necks." Anglo-Saxon Homilies, i. 212.

P. 71. *Of the Saxons I have formerly spoke something.* The technical Saxon words are "gecoren and áhafen tó cyninge," *elected and raised as king*, or *to be king*, and there is not a shadow of doubt, that a real election or choice did take place. Hereditary right there was none in the person, though it was never departed from in the family. Within this the people, that is the leaders of the people, selected the king whom they thought most fitting. Hence the continual breaks in the succession. See "The Saxons in England," ii. 214 seq.

P. 76. *Ceremony of coronation.* See Sir H. Nicolas, Chronology of History, p. 274.

P. 86. *Is pretty hard to guess.* Sir R. Twysden is totally wrong in this. Neither Pipin nor Charles sent anything of the sort to our William, and this he clearly sees: but he evidently has misunderstood the whole occasion on which the celebrated message of Pipin really was sent, and to whom. It was the closing step of that system of intrigue by which the Carolings substituted themselves for the Merwingian dynasty, to which Sir R. himself immediately afterwards refers. Pipin, who as mayor of the palace had really long possessed the royal power, sent to Pope Zachary to ask whether it was fitting that the crown should be worn by those who wielded its authority, or those who were contented with the mere name of king? And on receiving the answer he expected, proceeded to depose Hilderich, the last Merwingian. See the details in Annales Laurissenses Minores; Einhardi Fuldensis Annales, an. 751; Reginon. Chron. an. 749: all in Pertz, Monumenta Germaniæ, i. pp. 116, 346, 556. The passage quoted by Twysden is not in the laws of William, but in those of Eádweard the Confessor: see Thorpe, Anc. Laws and Institutes, vol. i. p. 449.

P. 106. *What king did first take this oath.* In all probability, there never was a king who did not take it upon his election. The earliest, however, that we know, is that which Æðelred made at Kingston, and which was given him by Dunstan. "The Saxons in England," ii. 35, note.

P. 109. *Though he should be the cheife justiciar.* "For you shall better execute iudgementes by other then by yourselfe. Neyther hath yt beene seene that anye kinge of Englande hathe pronounced iudgement with his own mouth. And yet, neverthelesse, the iudgementes of the roialme are his, thoughe by others they be uttered and pronounced." Fortesc. Commend. cap. 8. One of the best safeguards of our freedom is, that the king, though theoretically the source of justice, is not practically its minister. We can hang (traditionally) unjust judges, or (historically) fine and deprive them. It would be difficult to do this with the king, who represents the nationality of a whole people. Nor can we proceed to this extent against the king, until he has demonstrated the total impossibility of dealing with him as an honest man. Then there seems but one possible solution of the difficulty.

Ibid. *Set Westminster hall right, etc.* No doubt. But the most illegal acts of Charles

the First had been done by means of his judges, who, to use Lord Falkland's words, "instead of being as dogs to defend the sheep, had been as wolves to worry them." Speech Decr. 7th 1640. Rushworth, iv. 86. Nor could there ever be any security on this point until the act passed to render the judges irremoveable at pleasure. Scroggs, Wright, and Jefferys, might possibly have been honest men under less provocation to be rogues.

P. 110. *And if such come, the justices not to leave doing justice, etc.* In the celebrated case of *Commendams*, Jac. 1[1]. an. 1616, which ultimately led to Coke's disgrace, the judges refused to obey the king's orders, as being contrary to their oath of office, and to the spirit of 25 Ed. III. and 25 Hen. VIII. One of the charges brought against Coke, was that he had behaved insolently to the king in this case; in other words, he had maintained the integrity of justice, and the undoubted law of the land against the new-fangled doctrines of prerogative; and that he continued to do this, even when the rest of the judges gave way.

P. 119. *Parlyaments brought hither from Germany.* See this question treated in greater detail, "The Saxons in England," ii. 182 seq.

Ibid. *After Augustine's coming.* We have no *history* at all till after Augustine's coming, and, consequently no record of witena gemóts. But the moment we have a history, we find such parliaments in full force; nor is there any account of their introduction as a novelty by Æðelberht, or any other king .In short, the Teutonic state cannot be conceived without them. It is certain that a formal witena gemót, perhaps also a folcmót, was held by the heathen Northumbrians to discuss the adoption of christianity.

P. 120. *Usually first take into their consideration.* But when necessary, they have steadily refused to give a supply until after redress of grievances. This was the constant stumbling-block with James the First and Charles the First.

Ibid. *As an appendix to Magna Charta.* This can hardly be doubted: see the remonstrance of the archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the land (tota terræ communitas) to Edward, and the additional or explanatory articles to Magna Charta. An. Trivet, 1297. In the words of this chronicler, "Articuli adjecti ad Magnam Chartam sunt isti: 'Nullum tallagium vel auxilium per nos vel heredes nostros de cetero in regno nostro imponatur, sine voluntate et assensu communi archiepiscoporum, episcoporum, et aliorum prelatorum, comitum, baronum, militum, burgensium, et aliorum liberorum hominum. Nullus minister noster, vel heredum nostrorum, in regno nostro capiat blada, lanas, coria, aut aliqua alia bona cujuscunque, sine voluntate et assensu illius cujus fuerint. Nihil capiatur de cetero nomine vectigalis de sacco lanæ.'"

P. 129. *At which his Majesty excepted, etc.* In his answer to the articles for a cessation at Oxford, March 23rd 1643. See Rushworth, v. 177; Clarendon, ii. 147.

P. 131. *Every man should come without armor, etc.* It was only by dint of the most determined action on the part of the clergy, led by archbishop Robert of Winchelsea, and a party of the nobility, that Edward was compelled to confirm Magna Charta, and the Charta de Foresta. After repeated attempts at deception, and even a petition to the pope to release him from his oaths, the king succumbed. How the confirmation of the Charta de Foresta was obtained we learn from an old chronicler. " Rex Angliæ parliamentum tenuit Stanfordiæ; ad quod convenerunt comites et barones, cum equis et armis, eo ut dicebatur proposito, ut exsecutionem Chartæ de Foresta hactenus dilatam extorquerent ad plenum. Rex autem eorum instantiam et importunitatem attendens, eorum voluntate in omnibus condescendit." An. Trivet, 1301.

P. 133. *From the Mirror, King Alured made a law, etc.* The opinions respecting king Ælfred's laws entertained by the author of the Mirror are no authority whatever. It is impossible for any thing to be more totally devoid of foundation. Twysden is perfectly right in his criticism upon Sir E. Coke's version of the folcmót in Saxon times. The passages cited all refer directly to the shiremoot. Nevertheless, as Twysden seems to have had a dim suspicion, there was a time when the folcmót or parliament was little more than a shiremoot, though not in that fabulous period which modern ingenuity has christened the Heptarchy.

P. 134. *Edicto regio convocati.* There are various instances of witena gemóts called by royal summons, or *ban;* indeed *bannan*, to proclaim, is the technical term. On such occasions we cannot imagine, with Spelman, a mere meeting of the nobles at Christmas, Easter, and Whitsuntide, " ex more et obsequii vinculo." No doubt the old Germans had *bidden* as well as *unbidden* meetings, nor does the admission of the latter at all imply the non-existence of the former.

P. 140. *Now as the frequent calling of them, etc.* How pregnant a comment have the events of this year supplied upon this most judicious observation! How many realms might yet be engaged in a safe and easy political progress, had their rulers known that, even if parliaments be a chief means to keep greatness in order, they are a yet surer means to prevent disaffection from festering and ripening among the people.

THE END.

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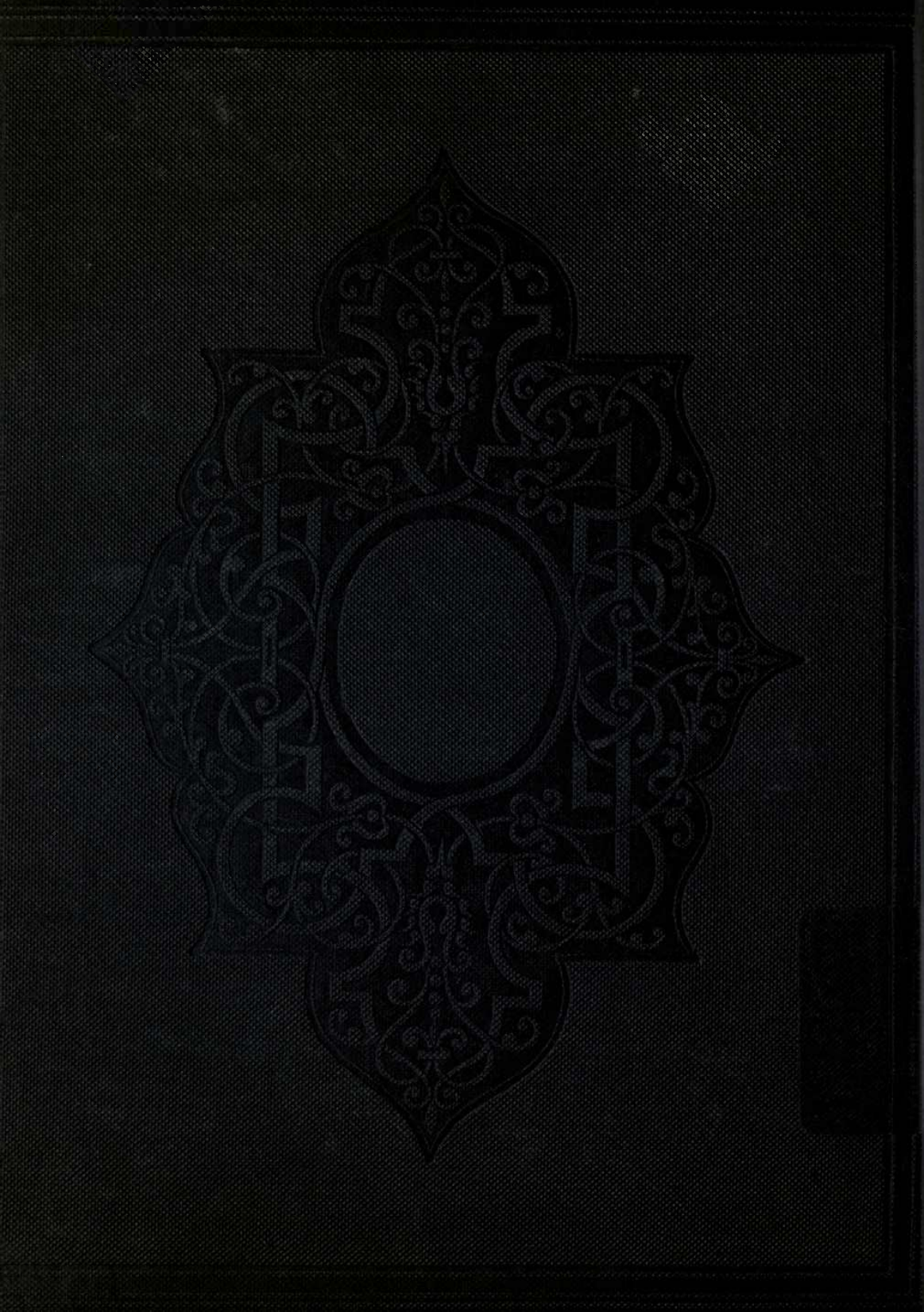
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